IN THE

United States Court of Appeals for the District of Columbia

APRIL TERM, 1941

No. 7929

AMERICAN MEDICAL ASSOCIATION, A CORPORATION, APPELLANT,

vs.

UNITED STATES OF AMERICA, APPELLEE

No. 7930

THE MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA, A CORPORATION, APPELLANT,

vs.

UNITED STATES OF AMERICA, APPELLEE

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

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1 [Stamp:] Filed in open court Dec. 20, 1938.
Charles E. Stewart, Clerk.

DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA, HOLDING A CRIMINAL TERM

Criminal No. 63221

OCTOBER TERM, A. D. 1938

UNITED STATES OF AMERICA,
District of Columbia, ss.:

Indictment

The Grand Jurors of the United States of America, at a regular term of the District Court of the United States for the District of Columbia, to wit: the October 1938 term thereof, held at Washington, in the District of Columbia, after being duly impanelled, sworn, and charged at the term of court aforesaid, as an additional Grand Jury in and for said District, inquiring for the said District, upon their oaths find and present, as follows:

I. The Defendants

1. The following corporations and associations are hereby made defendants:

(1) American Medical Association, incorporated under the laws of Illinois and having its office and principal place of business in Chicago, Illinois;

(2) The Medical Society of the District of Columbia, incorporated under an Act of Congress and having its office and principal place of business in the District of Columbia;

2 (3) Harris County Medical Society, an unincorporated association, having its office and its principal place of business in Houston, Harris County, Texas;

(4) Washington Academy of Surgery, an unincorporated association, having its office and its principal place of business in the District of Columbia.

2. The following individuals, who will be referred to hereinafter as "the individual defendants," are hereby made defendants:

Arthur Carlisle Christie
Coursen Baxter Conklin

James Bayard Gregg Custis
William Dick Cutter
Morris Fishbein
Thomas Allen Groover
Robert Arthur Hooe
Rosco Genung Leland
Leon Alphonse Martel
Thomas Ernest Mattingly
Francis Xavier McGovern
Thomas Edwin Neill
Edward Hiram Reede
William Mercer Sprigg
William Joseph Stanton
John Ogle Warfield, Jr.
Olin West
Prentiss Willson
William Creighton Woodward
Wallace Mason Yater
Joseph Rogers Young

II. The Washington Hospitals

3. Each of the following corporations and associations were engaged in the business of operating a hospital
3 throughout the period of the conspiracy hereinafter described:

Central Dispensary and Emergency Hospital
Children's Hospital of the District of Columbia
Columbia Hospital for Women
Eastern Dispensary and Casualty Hospital
Episcopal Eye, Ear and Throat Hospital
Garfield Memorial Hospital
Georgetown University Hospital
George Washington University Hospital
National Homeopathic Hospital of the District of Columbia.
Providence Hospital
Sibley Memorial Hospital
Washington Sanitarium and Hospital

These hospitals are located in Washington in the District of Columbia, except that the Washington Sanitarium and Hospital is located in Takoma Park, Maryland. The hospitals listed in this paragraph will be referred to collectively

hereinafter as "the Washington hospitals." The said hospitals include all of the hospitals in the District of Columbia not operated by the government.

III. Relationship between Certain Defendants

A. Relationship between Defendant American Medical Association and Defendants The Medical Society of the District of Columbia and Harris County Medical Society

4. Membership in defendant American Medical Association is ordinarily obtainable only through affiliated State or territorial medical associations, known as "constituent" associations or societies of American Medical Association. Defendant The Medical Society of the District of Columbia is a constituent medical society of defendant American Medical Association. Membership in most "constituent" associations or societies is ordinarly obtainable only through membership in affiliated county or local medical societies, known as "component" societies of those constituent associations and of the American Medical Association. Defendant The Medical Society of the District of Columbia has no component societies. Defendant Harris County Medical Society is a component medical society of defendant American Medical Association. Members of affiliated component or constituent medical societies are, ipso facto, members of defendant American Medical Association.

B. Memberships and Offices Held by Individual Defendants

5. Membership in defendant American Medical Association was held by all individual defendants throughout the period of the conspiracy hereinafter described. For many years, and throughout the period of the conspiracy hereinafter described, the following individual defendants, namely:

Morris Fishbein, Editor of the Journal of the American Medical Association;

Olin West, Secretary and General Manager of the American Medical Association;

William Creighton Woodward, Director of the Bureau of Legal Medicine and Legislation of the American Medical Association;

William Dick Cutter, Secretary of the Council on Medical Education and Hospitals of the American Medical Association;

Rosco Genung Leland, Director of the Bureau of Medical Economics of the American Medical Association,

have been employed by defendant American Medical Association in the positions indicated and, as the principal full-time officials and employees of said defendant Association, have been engaged in the active management of its business affairs and have been largely instrumental in formand effectuating its policies and, in particular, in managing the business affairs and in forming and effectuating the policies of said defendant Association hereinafter set forth.

6. Membership in defendant The Medical Society of the District of Columbia was held, throughout the period of the conspiracy hereinafter described, by all of the individual defendants except those listed in paragraph 5 of this indictment as employees and officials of defendant American Medical Association.

7. Defendant The Medical Society of the District of Columbia has an executive committee charged with carrying out the policies of the said defendant society.

8. Offices in defendant The Medical Society of the District of Columbia, and membership in the Executive Committee, were held during all or part of the period of the conspiracy hereinafter described by the individual defendants whose names are indicated below:

Thomas Edwin Neill, President, and member of the Executive Committee;

Coursen Baxter Conklin, Secretary-Treasurer, and member of the Executive Committee;

Robert Arthur Hooe, member of the Executive Committee;

Francis Xavier McGovern, member of the Executive Committee;

Edward Hiram Reede, member of the Executive Committee;

William Mercer Sprigg, member and Chairman of the Executive Committee;

Wallace Mason Yater, member of the Executive Committee.

9. Membership on the Hospital Committee of defendant The Medical Society of the District of Columbia was held by the individual defendants listed below during all or part of the period of the conspiracy hereinafter described:

Leon Alphonse Martel
John Ogle Warfield, Jr.
Joseph Rogers Young

6 10. Membership on regular or attending staffs of the Washington hospitals was held by individual defendants throughout the period of the conspiracy hereinafter described, as follows:

Coursen Baxter Conklin, Children's Hospital of the District of Columbia, Eastern Dispensary and Casualty Hospital, George Washington University Hospital.

James Bayard Gregg Custis, National Homeopathic Hospital of the District of Columbia.

Robert Arthur Hoge, Central Dispensary and Emergency Hospital.

Thomas Ernest Mattingly, Sibley Memorial Hospital.

Leon Alphonse Martel, Georgetown University Hospital.

Francis Xavier McGovern, Garfield Memorial Hospital.

Thomas Edwin Neill, Episcopal Eye, Ear and Throat Hospital, Garfield Memorial Hospital.

William Mercer Sprigg, Columbia Hospital for Women.

William Joseph Stanton, Georgetown University Hospital.

7 John Ogle Warfield, Jr., Children's Hospital of the District of Columbia, Garfield Memorial Hospital.

Prentiss Willson, Columbia Hospital for Women.

Wallace Mason Yater, Georgetown University Hospital.

Joseph Rogers Young, Eastern Dispensary and Casualty Hospital.

IV. The Background of the Conspiracy

11. In the last few decades great and unprecedented advances in medical knowledge and technique have occurred. No single doctor now knows or can know enough medical science to enable him to render complete and adequate medical care. Specialization in the rendition of medical care has necessarily resulted. Costly diagnostic and therapeutic equipment and facilities have now become essential

for the rendition of complete and adequate medical care. The cost of complete and adequate medical care has increased substantially.

12. Many persons embraced within the low income group in the United States, including the District of Columbia, do not now obtain, and cannot now afford to obtain, complete and adequate medical care.

8 13. During the last few decades, many general practitioners and specialists have associated themselves together in group practice in order to reduce the cost and improve the quality of medical care by sharing their knowledge and by making joint use of equipment and facilities. During the last few decades attempts have been made to enable persons in the low income group to meet the cost of medical care on a risk sharing prepayment basis and thus to avoid excessive economic burdens occasioned by the uneven incidence of illness. To achieve these objectives, organizations have been formed in which general practitioners and specialists engaged in group practice undertake to give complete medical care of high quality to persons who pay therefor on a risk sharing prepayment basis.

14. Experimentation with group medical practice on a risk sharing prepayment basis, if not obstructed by coercive restraints, may contribute to the solution of the problem of providing complete and adequate medical care. Many surveys of the problem in recent years have resulted in recommendations for such experimentation. There is reason to believe, and a large body of informed opinion holds, that the supplying of medical care in this manner and on this basis may be so organized as to obtain qualified doctors and to afford those doctors conditions of practice which are conducive to a high quality of medical service satsifactory to both doctor and patient and which enable the said doctors to find satisfaction in their work and to obtain a stable, adequate net income; moreover, that this method of supplying medical care may be utilized without unduly affecting such free choice of physicians as is ordinarily enjoyed by patients and without involving interference on the part of laymen with the medical service or with the relationship subsisting between doctor and patient. There is reason to believe, and a large body of informed opinion holds, that such method of providing medical care is less costly than,

and, in many respects from the standpoint of both doctor and patient, superior to, individual practice on a fee for service basis.

15. Principally for economic reasons and because it has feared, for its members, business competition from the doctors connected with organizations in which doctors engage in group practice on a risk sharing prepayment basis, defendant American Medical Association, and the individual defendants employed by said defendant Association, have adopted and for many years have pursued a policy of opposition to experimentation with such organizations, and have taken affirmative steps to oppose their formation and operation throughout the United States.

V. The Dominant Position of Defendant American Medical Association and the Circumstances Affording the Defendants, Acting Together, Economic and Other Coercive Power to Restrain Group Medical Practice on a Risk Sharing Prepayment Basis

A. The Importance of Membership in Medical Societies, of Consultations, and of Hospital Privileges

16. Membership in a medical society affiliated with defendant American Medical Association, and hence in defendant American Medical Association itself, is valuable to practicing doctors because such membership carries professional prestige, because defendant American Medical Association and affiliated societies provide desirable services for and contacts to members, and because many doctors and many hospitals and others serving the medical profession deal only with such doctors as are members of defendant American Medical Association. Exclusion or expulsion from membership in a medical society affiliated with defendant American Medical Association, and hence from membership in defendant American Medical Association itself, deprives doctors, including doctors engaged in group practice on a risk sharing prepayment basis, of these advantages and also injures their professional standing.

17. Consultations between doctors are frequently advantageous, both to the patient and to the doctors. Defendant American Medical Association recommends that doc-

tors seek consultations with other doctors in cases of serious illness. Consultations with specialists outside of the group is frequently desirable for doctors engaged in group practice on a risk sharing prepayment basis. Doctors, including doctors engaged in group practice on a risk sharing prepayment basis, are seriously handicaped if they are prevented from obtaining consultations.

18. The privilege of attending and treating their patients in a well-equipped hospital is essential for all practicing surgeons. Such privilege is desirable for all practicing doctors. Exclusion from hospitals of surgeons and physicians, including those engaged in group practice on a risk sharing prepayment basis, seriously restrains them in the pursuit of their callings.

19. It is desirable and frequently essential for the successful conduct of the business of organizations engaged in arranging for the provision of medical care by salaried doctors engaged in group medical practice on a risk sharing prepayment basis, and thus for the members of or subscribers to such organizations, that the doctors composing the medical staffs thereof, equally with other doctors, be afforded the opportunity of obtaining, and be not prevented from obtaining, memberships in medical societies, consultations with other doctors, and the use of hospital facilities.

B. Power of Certain Defendants to Exclude and to Expel Doctors Engaged in Group Practice on a Risk Sharing Prepayment Basis from Membership in Medical Societies

20. A large percentage of the doctors practicing in the District of Columbia (in excess of 800) are members
11 of defendant The Medical Society of the District of Columbia, and thus of defendant American Medical Association. There are approximately 145,000 doctors engaged in practice in the United States. Approximately 110,000 doctors are members of defendant American Medical Association. Defendant American Medical Association has a gross income of several million dollars a year, and its investments in capital assets have been and are substantial; it employs about 500 persons in the conduct of its business. Defendant American Medical Association is engaged in the business of publishing a weekly magazine

known as The Journal of the American Medical Association, which has a weekly circulation of approximately 95,000; it is the only medical journal with an extensive circulation among the members of the medical profession. The said Journal contains a section entitled "Organization Section," devoted to organizational, business, economic, and social aspects of medical practice. The said Journal has been edited and managed in such a manner as to express the policy of defendant American Medical Association and of the individual defendants employed by it of opposition to group medical practice on a risk sharing prepayment basis and to further the effectuation of such policy of opposition. The columns of said Journal have not been open for the expression of contrary views about group medical practice on a risk sharing prepayment basis. Defendant American Medical Association maintains a bureau known as the Bureau of Medical Economics, which concerns itself with the economic organization of the practice of medicine. The said Bureau of Medical Economics has taken a leading part in carrying out defendant American Medical Association's policy of opposing, discouraging, and suppressing group medical practice on a risk sharing prepayment basis. By reason of its size, organization and activities, defendant American Medical Association is the only important society representative of the medical profession in the United States. The medical profession in the United States and its policies are influenced and to a great extent controlled by defendant American Medical Association.

12 21. Defendant American Medical Association has promulgated certain rules, called by it "Principles of Medical Ethics", which purport to define the duties of doctors in their relations with their patients and among themselves. The constituent and component societies of defendant American Medical Association, including defendant The Medical Society of the District of Columbia and defendant Harris County Medical Society, have adopted and they govern their members by the said "Principles of Medical Ethics". The members of defendant The Medical Society of the District of Columbia are required to, and do, pledge themselves to comply with said principles. These so-called "Principles of Medical Ethics" are expressed in the form of indefinite standards and, as interpreted and applied by defendant American Medical Association and

its affiliated constituent and component societies, are not confined to requirements of ethical, moral, or legal conduct, but embody as well purely economic restrictions upon the practice of medicine. Under these rules, so interpreted, defendant American Medical Association and its affiliated constituent and component societies can, and frequently do, condemn as "unethical" group medical practice on a risk sharing prepayment basis, principally because such practice is in business competition with and threatens the incomes of doctors engaged in practice on a fee for service basis, and particularly of doctors so practicing who are members of defendant American Medical Association and its affiliated constituent and component societies.

22. The affiliated constituent and component societies of defendant American Medical Association, including defendant The Medical Society of the District of Columbia and defendant Harris County Medical Society, act as enforcing agencies of defendant American Medical Association with respect to the "Principles of Medical Ethics". Said constituent and component societies, including defendant The Medical Society of the District of Columbia and defendant Harris County Medical Society, under the supervision and control of defendant American Medical Association, have the power to, and do, suspend, expel, or otherwise discipline members claimed by said defendant societies and association to have violated the "Principles of Medical Ethics". Principally for the reasons hereinabove set forth, defendants American Medical Association, The Medical Society of the District of Columbia, and Harris County Medical Society possess power to expel or exclude from membership a doctor disapproved by them solely because he has associated himself with group medical practice on a risk sharing prepayment basis.

C. Power of Certain Defendants to Restrain Doctors from Engaging in Group Medical Practice on a Risk Sharing Prepayment Basis and to Restrain Doctors from Consulting with Doctors so Engaged

23. A provision, to wit: Chapter IX, Article IV, Section 5 of the constitution of defendant The Medical Society of the District of Columbia prohibits any professional relationship whatsoever, including consultations, between members of the said defendant Society on the one hand and,

on the other, any doctor, organization or group rendering medical care within the District of Columbia or within ten miles thereof, which doctor, organization, or group has not been "approved" by defendant The Medical Society of the District of Columbia. By reason of this provision, and by reason of the power of defendant The Medical Society of the District of Columbia to exclude applicants for membership, and to suspend, expel, or otherwise discipline its members, under the supervision and control of defendant American Medical Association, said defendants have power to deter doctors from engaging in group medical practice on a risk sharing prepayment basis or from consulting with doctors engaged in such group practice.

D. Power of Certain Defendants to Restrain Doctors Engaged in Group Practice on a Risk Sharing Prepayment Basis from Obtaining Access to Hospital Facilities

24. The medical services and the determination of the medical policies of the Washington hospitals are controlled in each such hospital by a medical staff, consisting of doctors appointed thereto by the governing body of the hospital and commonly designated as the "regular" or "attending" staff of the hospital. Doctors on such a
14 "regular" or "attending" staff of a Washington hospital are privileged to treat and operate upon their private patients within that hospital and to use the facilties thereof. Each Washington hospital also has a "courtesy" staff, comprising those doctors, not on its "regular" or "attending" staff, who are permitted to treat or operate on their patients in that hospital. Except in emergency cases, only those doctors who have been appointed to the "attending" or "regular" staff or to the "courtesy" staff of a Washington hospital are permitted to treat or operate on patients within that hospital. Formal appointment to the courtesy staff of each Washington hospital is made by the governing body of that hospital.

25. Applications for appointment to the courtesy staff of each Washington hospital are passed upon by the attending or regular staff of that hospital. Each Washington hospital, acting through its governing body, ordinarily finds it expedient to follow, and ordinarily does follows, the recommendations of its attending or regular staff with respect

to appointments to its courtesy staff. Nearly all members of the attending or regular staff of each Washington hospital are members of defendant The Medical Society of the District of Columbia and of defendant American Medical Association. As such members, they know, and can and do communicate to the Washington hospitals, the policies and wishes of defendant The Medical Society of the District of Columbia and of defendant American Medical Association.

26. Defendant The Medical Society of the District of Columbia has a standing committee, known as the Hospital Committee, composed of a member of the regular or attending staff of each Washington hospital, whose function it is to communicate to the Washington hospitals the policies and wishes of defendant The Medical Society of the District of Columbia, to endeavor to obtain compliance by the Washington hospitals with those wishes and policies, and further, to keep defendant The Medical Society of the District of Columbia informed with respect to compliance by the Washington hospitals with those wishes and policies.

15 27. Defendant The Medical Society of the District of Columbia has approved each of the Washington hospitals located in Washington. Defendant The Medical Society of the District of Columbia, by withdrawing its approval of a Washington hospital, makes a member of the attending or regular medical staff of that hospital who continues to serve on such staff subject to disciplinary action by said defendant society, including expulsion from said society. Simultaneous withdrawal of the members of its regular or attending staff from a Washington hospital, in order to obtain compliance by that hospital with the wishes and policies of the defendant The Medical Society of the District of Columbia, would deprive the hospital of services essential to it, would cause it a loss of prestige, and would thereby seriously injure the said hospital.

28. Defendant Washington Academy of Surgery makes recommendations to some of the Washington hospitals with respect to appointments to their courtesy staffs. In making such recommendations, defendant Washington Academy of Surgery can and does carry out the policies and wishes of defendant The Medical Society of the District of Columbia. The recommendations of defendant Washington Academy of Surgery with respect to such appointments are ordinarily

followed by the regular or attending staff of the Washington hospitals in making recommendations to the governing bodies of such hospitals with respect to applications for such appointments.

29. Medical students and doctors receiving postgraduate training in hospitals, ordinarily known as "interns" and "residents," render valuable services to the hospitals without substantial compensation. Defendant American Medical Association, by means of periodic inspections, determines and declares what hospitals in the United States it believes are suitable for postgraduate training of interns and residents. No other public or private agency rates
16 hospitals for this purpose. In order to obtain credit generally throughout the medical profession for postgraduate training in hospitals, and frequently in order to obtain a medical degree or a license to practice, it is necessary for medical students and doctors to take such training in hospitals which defendant American Medical Association has approved for that purpose. Loss of approval by defendant American Medical Association therefore not only causes a loss of prestige to a hospital, but also ordinarily prevents a hospital from obtaining interns and residents. Inability to obtain interns and residents ordinarily compels a hospital to employ house doctors, at substantial expense.

30. Defendant American Medical Association has adopted the policy that hospitals approved by it for intern and resident training should have on their medical staffs only doctors who are members of defendant American Medical Association.

31. Each Washington hospital is approved by defendant American Medical Association for the training of interns or of residents or of both. The power of defendant America Medical Association to withdraw such approval gives defendant American Medical Association power to enforce compliance by Washington hospitals with the policies and wishes of defendant The Medical Society of the District of Columbia and of defendant American Medical Association.

32. Principally for the reasons hereinabove alleged, defendants American Medical Association, The Medical Society of the District of Columbia, and Washington Academy of Surgery possess power to expel or exclude a doctor, disapproved by them solely because he has engaged in group

medical practice on a risk sharing prepayment basis, from attending and treating his patients in the Washington hospitals, the said Washington hospitals including all the hospitals in the District of Columbia in which private patients may be treated by doctors.

17 VI. The Conspiracy

33. Group Health Association, Inc. was incorporated on February 19, 1937, and authorized to do business under and by virtue of the laws of Congress for the District of Columbia. Said corporation is a non-profit, cooperative association of employees of certain departments in the executive branch of the United States Government employed in the District of Columbia. Most members of Group Health Association, Inc., are embraced within the low income group, over 80% of them earning annual incomes of not more than $2,000. Said corporation is engaged in the District of Columbia in the business of arranging for the provision of medical care and hospitalization to its members and their dependents on a risk sharing prepayment basis. Said corporation collects monthly payments in the form of dues from its members. Medical care is provided by a medical staff consisting of salaried general practitioners and specialists engaged in group practice under the sole direction of a medical director. Said corporation pays adequate salaries to the doctors on its medical staff and provides the medical staff with a modern, well equipped clinic, which was opened on November 1, 1937. Said corporation also defrays, within limits, the expenses of hospitalization of its members and their dependents. The personal relationship ordinarily existing between doctor and patient obtains between the doctors on the medical staff of Group Health Association, Inc. and their Group Health Association, Inc. patients.

34. Beginning in January, 1937, or shortly thereafter, and continuing to the date of the presentation of this indictment, the defendants, and certain members of defendant The Medical Society of the District of Columbia not made defendants, and the Washington hospitals, and other persons to the grand jurors unknown, well knowing the

18 foregoing facts, have combined and conspired together for the purpose of restraining trade in the District of Columbia, that is to say:

(1) for the purpose of restraining Group Health Association, Inc. in its business of arranging for the provision of

medical care and hospitalization to its members and their dependents on a risk sharing prepayment basis;

(2) for the purpose of restraining the members of Group Health Association, Inc. in obtaining, by cooperative efforts, adequate medical care for themselves and their dependents from doctors engaged in group medical practice on a risk sharing prepayment basis;

(3) for the purpose of restraining the doctors serving on the medical staff of said Group Health Association, Inc. in the pursuit of their callings;

(4) for the purrpose of restraining doctors (not on the medical staff of Group Health Association, Inc.) practicing in the District of Columbia, including the doctors so practicing who are made defendants herein, in the pursuit of their callings;

(5) for the purpose of restraining the Washington hospitals in the business of operating such hospitals.

In so doing, defendants have then and there engaged in an unlawful combination and conspiracy in restraint of trade in and of the District of Columbia in violation of Section 3 of the Act of Congress on July 2, 1890, known as the Sherman Antitrust Act.

35. Throughout the period covered by this indictment, Group Health Association, Inc. and its medical staff were discussed at frequent meetings of defendant The Medical Society of the District of Columbia and of committees of said defendant Society, and at other meetings and conferences. At such meetings and conferences, the combination and conspiracy hereinabove described was proposed, discussed, and formed, in part, and carried on in part. Plans, understandings, and agreements to accomplish the unlawful purposes hereinabove described were proposed, discussed and adopted at such meetings. Many of such plans, undersfandings, and agreements were set forth in formal resolutions adopted by defendant The Medical Society of the District of Columbia, and by the committees thereof. Among such resolutions was the following resolution adopted at a meeting of defendant The Medical Society of the District of Columbia, held in Washington in the District of Columbia, on November 3, 1937:

Whereas, The Medical Society of the District of Columbia has an apparent means of hindering the successful opera-

tion of Group Health Association, Inc., if it can prevent patients of physicians in its employ being received in the local private hospitals; and

Whereas, The Medical Society of the District of Columbia has no direct control over the policies of such hospitals as determined by their lay boards of directors, except through its control of its own members serving on their medical staffs; and

Whereas, conflicts between the Medical Society of the District of Columbia and any local hospitals arising from an attempt to enforce the provisions of Chapter IX, Article IV, Section 5, of its Constitution should be assiduously avoided, if possible, because of the unfavorable publicity that would accrue to its own members; therefore, be it

Resolved, That the Hospital Committee be, and is hereby, directed to give careful study and consideration to all phases of this subject and report back to the Society, at the earliest practicable date, its recommendations as to the best way of bringing this question to the attention of the medical boards and boards of directors of the various local hospitals in such a manner as to insure the maximum amount of practical accomplishment with the minimum amount of friction and conflict."

Following adoption of the said resolution of November 3, 1937, the combination and conspiracy hereinabove described was further discussed and carried on at later meetings of defendant The Medical Society of the District of Columbia and of committees of said defendant Society, and at other meetings and conferences. Said meetings were held, said resolutions were adopted, and said plans, understandings, and agreements were proposed, discussed, and adopted, with the knowledge, approval and assistance of defendant American Medical Association and of the individual defendants who are employed by defendant American Medical Association.

36. The combination and conspiracy hereinabove described and the intended restraints which have resulted therefrom have been effectuated in the following manner and by the following means, among others, to wit:

(a) Defendants have combined and conspired with the plan and purpose to hinder and obstruct Group Health Association, Inc., in procuring and retaining on its medi-

cal staff qualified doctors, and to hinder and obstruct the doctors serving on that staff from obtaining consultations with other doctors and specialists practicing in the District of Columbia. Pursuant to this plan and purpose the defendants have performed, among others, the following acts: Defendants (other than defendants Washington Academy of Surgery and Harris County Medical Society) circulated a "white list" of organizations, groups and individuals approved by the defendant The Medical Society of the District of Columbia, omitting from said "white list" the name of Group Health Association, Inc. with the intent and purpose of threatening with disciplinary action any doctors, members of defendant The Medical Society of the District of Columbia, who should become members
21 of the medical staff of Group Health Association, Inc. or who should consult with members of the medical staff of Group Health Association, Inc. Defendants (other than defendants Washington Academy of Surgery and Harris County Medical Society) instituted disciplinary proceedings against two doctors, who were the only doctors on the medical staff of Group Health Association, Inc. who were members of defendant The Medical Society of the District of Columbia. Principally by means of such disciplinary proceedings, the said defendants induced and coerced one of the said doctors to resign from the staff of Group Health Association, Inc., and brought about the expulsion of the other doctor from membership in defendant The Medical Society of the District of Columbia. Defendant Harris County Medical Society at the request of defendant The Medical Society of the District of Columbia and of the other defendants (except defendant Washington Academy of Surgery), instituted disciplinary proceedings against a doctor on the medical staff of Group Health Association, Inc. who was a member in good standing of said defendant Harris County Medical Society and the only other doctor on the medical staff of Group Health Association, Inc. who was a member of defendant American Medical Association. The doctors against whom the above described disciplinary proceedings were instituted were and are qualified, ethical doctors in good standing; the disciplinary proceedings above described were instituted against these doctors because of their association with Group Health Association, Inc., and for the purpose

of depriving the said Group Health Association, Inc. doctors of the privileges of consulting with other doctors and of using the facilities of the Washington hospitals. The said defendants also instituted similar disciplinary preceedings against a specialist practicing medicine in the District of Columbia, on the alleged ground that he had consulted with a doctor on the staff of Group Health Association, Inc., intending thereby to penalize the said specialist for failing to boycott Group Health Association, Inc. doctors and thereby to induce other specialists to boycott Group Health Association, Inc. doctors. Principally by the means hereinabove described, defendants have coerced doctors to boycott Group Health Association, Inc. by refraining from becoming members of or by resigning from, the medical staff of Group Health Association, Inc., and to boycott doctors on the medical staff of Group Health Association, Inc. by refusing to consult with them about their patients. By thus coercing doctors, defendants hindered and obstructed Group Health Association, Inc. in procuring and retaining on its medical staff qualified doctors, and hindered and obstructed doctors on the medical staff of Group Health Association, Inc. in obtaining consultations with doctors not on that staff.

(b) Defendants have combined and conspired with the plan and purpose to hinder and obstruct Group Health Association, Inc. in obtaining access to hospital facilities for its members, and to hinder and obstruct the doctors on the medical staff of Group Health Association, Inc. from treating and operating upon their patients in Washington hospitals. Pursuant to this plan and purpose, defendants have performed, among others, the following acts: Defendants (other than defendants Washington Academy of Surgery and Harris County Medical Society) circulated among the Washington hospitals a "white list" of organizations, groups and individuals approved by the defendant The Medical Society of the District of Columbia, omitting from said "white list" the name of Group Health Association, Inc. with the intent and purpose of threatening with punitive action any such hospital which should admit to its courtesy staff a doctor on the medical staff of Group Health Association, Inc., however qualified or however great his professional skill. Defendants (other than defendants Washington Academy

of Surgery and Harris County Medical Society) urged and demanded that the Washington hospitals admit to their staffs only those doctors who were members of defendant The Medical Society of the District of Columbia or of neighboring medical societies affiliated with defendant American Medical Association, and, hence, of defendant American Medical Association, well knowing that doctors on the medical staff of Group Health Association, Inc., were not permitted, and intending that they be not permitted, to become or remain members of such societies. Defendant Washington Academy of Surgery recommended to those Washington hospitals which made inquiry of it that
24 said hospitals exclude from their courtesy staffs the surgeon on the medical staff of Group Health Association, Inc.; in so doing, said defendant Washington Academy of Surgery based its action principally upon the membership of said surgeon on the medical staff of Group Health Association, Inc. The Washington hospitals have failed and refused to appoint the surgeon on the medical staff of Group Health Association, Inc. to their courtesy staffs notwithstanding the fact that said surgeon is qualified and competent in the practice of surgery; in so doing, the said hospitals based their actions principally upon the membership of said surgeon on the medical staff of Group Health Association, Inc. Defendants (other than defendants Washington Academy of Surgery and Harris County Medical Society), by threatening to deprive him of courtesy staff privileges at a Washington hospital, induced a physician on the medical staff of Group Health Association, Inc. to resign from the said Association's medical staff. Principally by the means hereinabove described, defendants have coerced the Washington hospitals to boycott Group Health Association, Inc. and the doctors on the said Association's staff. By thus coercing the Washington hospitals, defendants hindered and obstructed Group Health Association, Inc. in obtaining access to hospital facilities for its members, and hindered and obstructed the doctors on the medical staff of Group Health Association, Inc. from treating and operating upon their patients in the Washington hospitals.

25 37. Some defendants have performed certain of the acts herein set forth in the formation and in the furtherance of the combination and conspiracy, while other

defendants have performed other of the acts herein set forth in the formation and in the furtherance of the combination and conspiracy. Each defendant has, however, knowingly participated in the formation and furtherance of the combination and conspiracy, pursuant to the common purposes set forth in paragraph 34 of this indictment.

38. The combination and conspiracy hereinabove described, effectuated in part in the manner and by the means hereinabove alleged, has, as intended by defendants, prevented doctors from becoming or remaining members of the medical staff of Group Health Association, Inc., and has prevented other doctors from consulting with the doctors on the medical staff of Group Health Association, Inc., and has prevented doctors on the medical staff of Group Health Association, Inc. from treating and operating on their patients in any of the hospitals in or near the District of Columbia. Principally by these means, defendants, in thus combining and conspiring, have substantially accomplished all the illegal purposes set forth in paragraph 34 of this indictment, and have succeeded in imposing all said intended restraints of trade.

26 VII. Jurisdiction and Venue

39. The combination and conspiracy herein set forth has been formed to a large extent and, as intended by the defendants, has operated and been carried out to a large extent, within the District of Columbia. Most of the restraints of trade resulting from such combination and conspiracy have been imposed and effected in the District of Columbia. Among other acts done in the District of Columbia for the purpose of effectuating the combination and conspiracy alleged in this indictment was the adoption of the resolution set forth in paragraph 35 of this indictment, at a meeting of defendant The Medical Society of the District of Columbia.

And so the Grand Jurors aforesaid, upon their oaths aforesaid, do find and present that defendants, throughout the period aforesaid, at the places, and in the manner and form aforesaid, unlawfully have engaged in a continuing combination and conspiracy in restraint of the aforesai[illegible]rade and commerce in and of the District of
27 Columbia; contrary to the statute in such case made

and provided, and against the peace and dignity of the United States of America.

John Henry Lewin, Allan Hart, Douglas B. Maggs, Grant W. Kelleher, Special Assistants to the Attorney General. Thurman Arnold, Assistant Attorney General. David A. Pine, Attorney of the United States in and for the District of Columbia.

G. J, No. Orig. Criminal No. 63221. United States vs. American Medical Association et al. Indictment. Filed in Open Court Dec. 20, 1938. Charles E. Stewart, Clerk. A True Bill. William M. Beall, Foreman.

* * * * * * *

28 Filed Mar. 29, 1939. Charles E. Stewart, Clerk

Demurrer to the Indictment

Come now the defendants, American Medical Association; The Medical Society of the District of Columbia; Harris County Medical Society; Washington Academy of Surgery; Arthur Carlisle Christie; Coursen Baxter Conklin; James Bayard Gregg Custis; William Dick Cutter; Morris Fishbein; Thomas Allen Groover; Robert Arthur Hooe; Rosco Genung Leland; Leon Alphonse Martel; Thomas Ernest Mattingly; Francis Xavier McGovern; Thomas Edwin Neill; Edward Hiram Reede; William Mercer Sprigg; William Joseph Stanton; John Ogle Warfield, Jr.; Olin West; William Creighton Woodward; Wallace Mason Yater and Joseph Rogers Young, by their attorneys, and say that the Indictment herein is bad in substance.

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Matters of Law Intended to be Argued in Support of the Foregoing Demurrer

Among the matters of law intended to be argued in support of the foregoing Demurrer are the following:

29 1. The indictment does not allege facts sufficient in law to constitute any offense within the provisions of Section 3 of the Sherman Act, in that:

(a) The indictment does not charge a contract, combination or conspiracy in restraint of trade or commerce in the District of Columbia.

(b) The indictment does not set forth that the restraint of trade therein alleged was either unreasonable, material or direct.

(c) The restraints of trade alleged in the indictment were indirect, immaterial and reasonable.

(d) The indictment is vague, indefinite and uncertain, and fails to advise the defendants of the identity, nature or character of the trade or commerce to which the alleged conspiracy relates, or how or in what manner any of the acts, plans or conduct of the defendants, or any of them, resulted or could result in a restraint of trade or commerce in the District of Columbia.

(e) The allegations of the indictment are stated as conclusions, statements of opinion, inferences from conclusions and opinions, without averments of supporting and ultimate facts, and the defendants cannot lawfully be charged with knowledge of such conclusions, opinions and inferences; and, further, none of the alleged facts predicated upon such conclusions, opinions and inferences relate to or concern trade or commerce in the District of Columbia.

(f) There are no facts or ultimate facts alleged in the indictment that constitute a contract, combination or conspiracy in restrain of trade or commerce in the District of Columbia.

(g) The practice of their profession by physicians and surgeons is not trade or commerce within the meaning of Section 3 of the Sherman Act.

(h) The alleged business of Group Health Association, Inc., is not trade or commerce under Section 3 of the Sherman Act.

(i) The alleged acts of the members of Group Health Association, Inc., in obtaining or seeking to obtain by cooperative methods medical care for themselves and their dependents, as alleged in the indictment, do not constitute trade or commerce under Section 3 of the Sherman Act, and a restraint of or a conspiracy formed for the purpose of restraining said acts, as alleged in the indictment, is not in violation of said Section 3 of said Act.

(j) Group Health Association, Inc. was and is an unlawful organization engaged in the unauthorized practice of medicine as a corporation in violation of the laws of the

District of Columbia governing and controlling the right to practice medicine within the District of Columbia and a restraint of or a conspiracy to restrain said corporation or its members is not in violation of Section 3 of the Sherman Act.

(k) Group Health Association, Inc. was and is an unlawful organization engaged in the unauthorized operation of an insurance company in violation of the laws of the District of Columbia governing the rights and liabilities of insurance companies operating in the District of Columbia, and a restraint of or a conspiracy to restrain said corporation or its members is not in violation of Section 3 of the Sherman Act.

(l) Group Health Association, Inc., if held to be engaged in trade or commerce in the District of Columbia under Section 3 of the Sherman Act, is operating illegally in that the business, acts, purposes and functions of said Association and its members constitute a direct, material and unreasonable restraint of trade or commerce in violation of Section 3 of the Sherman Act if the medical profession and the practice of said profession by physicians and surgeons are held to be trade or commerce in the District of Columbia.

(m) Acts of the doctors performed in pursuit of their calling, as alleged in the indictment, do not constitute trade or commerce under Section 3 of the Sherman Act, and a restraint of or a conspiracy for the alleged purpose of restraining such doctors in the pursuit of their calling is not in violation of said Section 3 of said Act.

(n) The alleged business of the Washington Hospitals insofar as it is described in and charged to be the subject of the conspiracy set out in the indictment, is not trade or commerce under Section 3 of the Sherman Act, and a restraint of or a conspiracy for the alleged purpose of restraining such business of the Washington Hospitals is not in violation of said Section 3 of said Act.

31 (o) All and several, the acts and purposes of said defendants, as alleged and set forth in said indictment, were within the lawful rights and purposes of the said defendants.

2. Each and all of the acts charged against the defendants, and each of them, are in law and in fact acts involved in and a part of the practice of the learned profession of

the defendants and as such are not trade or commerce under Section 3 of the Sherman Act.

3. The averments of said indictment are too general, vague, indefinite and uncertain to inform the defendants of the nature and cause of the accusation against them, or to apprise them with reasonable certainty of the offense with which they are charged, or what they may expect to meet on the trial, so as to enable them to make their defense and, therefore, said indictment deprives said defendants of liberty and property without due process of law, contrary to the Fifth Amendment of the Constitution of the United States; and fails to inform the defendants of the nature and cause of the accusation against them as required by the Sixth Amendment to the Constitution of the United States.

4. The criminal provisions of Section 3 of the Sherman Act are so broad, unlimited, vague, uncertain and indefinite as not to inform the accused of the nature and cause of the accusation against them in violation of the Sixth Amendment to the Constitution of the United States, and said criminal provisions deprive defendants of liberty and property without due process of law in violation of the Fifth Amendment to the Constitution of the United States, and said criminal provisions illegally delegate legislative power to the Executive and Judicial branches of the Government to determine what acts under said statute should be held criminal and punishable in violation of Art. I, Sec. I, of the Constitution of the United States.

32 5. The indictment is bad in substance for other reasons apparent upon the face thereof.

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33 DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Wednesday, July 26", A. D., 1939.

The court resumes its session pursuant to adjournment; Mr. Justice Morris, presiding.

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Come as well the Attorneys of the United States, as each defendant herein by their attorneys William E. Leahy,

Edward M. Burke, Charles S. Baker, Adrien F. Busick, Seth W. Richardson and John E. Laskey Esquires; whereupon the defendants' demurrer to the indictment, heretofore argued and submitted to the Court, is by the Court sustained and the indictment is dismissed; and thereupon it is considered by the Court that each said defendant go thereof without day; whereupon the Attorneys of the United States pray an exception which is noted.

34 [Stamp:] Filed Jul. 31, 1939. Charles E. Stewart, Clerk.

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Notice of Appeal

Name and address of Appellant: United States of America.

Names and addresses of appellant's attorneys: Thurman Arnold, Assistant Attorney General, Washington, D. C.; David A. Pine, United States Attorney, Washington, D. C.

Offense: Violation of Section 3 of the Act of Congress of July 2, 1890 known as the Sherman Antitrust Act.

Date of judgment: July 26, 1939.

Brief description of judgment or sentence: Demurrers to Indictment sustained and Indictment dismissed.

The above-named appellant hereby appeals to the Court of Appeals of the District of Columbia from the judgment above-mentioned on the grounds set forth below.

United States of America, Appellant. Thurman Arnold, Assistant Attorney General. David A. Pine, Attorney of the United States in and for the District of Columbia.

Date: July 31, 1939.

Grounds of Appeal

(1) The court erred in sustaining the defendants' demurrers to the indictment.

(2) The court erred in entering judgment for defendants dismissing the indictment.

35 (3) The court erred in its construction and interpretation of Section 3 of the Act of Congress of July 2, 1890, known as the Sherman Antitrust Act.

(4) The court erred in construing Section 3 of the Act of Congress of July 2, 1890, known as the Sherman Anti-trust Act, as not applying to or forbidding the acts of the defendants set forth and charged in the indictment.

(5) The court erred in construing the indictment as not properly setting forth facts constituting a violation by the defendants of the provisions of Section 3 of the Act of Congress of July 2, 1890, known as the Sherman Antitrust Act.

(6) The court erred in holding that certain allegations of the indictment, are vague, indefinite, and uncertain, and the indictment, in some instances, lacking material facts, and, in some instances, containing improper allegations.

(7) The court erred in other respects apparent of record.

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36 [Stamp:] Filed Jun. 6, 1940. Charles E. Stewart, Clerk.

THE UNITED STATES OF AMERICA, ss:

The President of the United States of America

To the Honorable the Justices of the District Court of the United States for the District of Columbia, Greeting:

Whereas, lately in the District Court of the United States for the District of Columbia, before you, or some of you, in a cause between United States of America, Plaintiff, and American Medical Ass'n., a Corporation; The Medical Society of the District of Columbia, a Corporation; Harris County Medical Association, an Association; Washington Academy of Surgery, an Association; Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard Gregg Custis, William Dick Cutter, Morris Fishbein, Thomas Allen Groover, Robert Arthur Hooe, Roscoe Genung Leland, Thomas Ernest Mattingly, Leon Alphonso Martel, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, Prentiss Willson, William Creighton Woodward, Wallace Mason Yater, Joseph

Rogers Young, Defendants, Criminal No. 63,221, wherein the judgment of the said District Court entered in said cause on the 26th day of July, A. D. 1939, is in the following words, viz:

The Court resumes its session pursuant to adjournment: Mr. Justice Morris, presiding.

* * * * * * * * *

Indicted for Combination and Conspiracy in Violation of Section 3 of the Act of Congress of July 2, 1890, Known as the Sherman Anti-Trust Act.

Come as well the Attorneys of the United States, as each defendant herein by their attorneys William E. Leahy, Edward M. Burke, Charles S. Baker, Adrien F. Busick, Seth W. Richardson, and John E. Laskey, Esquires; whereupon the defendants' demurrer to the indictment, heretofore argued and submitted to the Court, is by the Court sustained and the indictment is dismissed; and thereupon it is considered by the Court that each said defendant go thereof without day; whereupon the attorneys of the United States pray an exception which is noted. (Memorandum opinion filed, Proctor, J.)

37 as by the inspection of the transcript of the record of the said District Court, which was brought into the United States Court of Appeals for the District of Columbia by virtue of an appeal, agreeably to the act of Congress in such case made and provided, fully and at large appears;

38 And Whereas, in the term of January, in the year of our Lord one thousand nine hundred and forty, the said cause came on to be heard before the said Court of Appeals on the said transcript of record, and was argued by counsel:

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed, and that this cause be, and it is hereby, remanded to the said District Court for further proceedings not inconsistent with the opinion of this Court.

March 4, 1940.

39 You, Therefore, are Hereby Commanded that such execution and further proceedings be had in said

cause not inconsistent with the opinion and judgment of this Court as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Charles Evans Hughes, Chief Justice of the United States, the 6th day of June in the year of our Lord one thousand nine hundred and forty.

Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia.

No. 7488. United States Court of Appeals for the District of Columbia, April Term, 1940. United States of America, Appellant, vs. American Medical Association, a Corporation, The Medical Society of the District of Columbia, a Corporation, Harris County Medical Society, an Association, et al. Mandate.

[Stamp:] Filed Jun. 6, 1940, Charles E. Stewart, Clerk.

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40 District Court of the United States for the District of Columbia

Friday, June 14", A. D., 1940.

The court resumes its session pursuant to adjournment: Mr. Justice Proctor, presiding.

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Come as well the Attorney of the United States, as the defendants in proper person, The American Medical Association by its attorneys, Messrs. Olin West, Seth W. Richardson, Edward M. Burke and Adrien Busick; The Medical Society of D. C., by its attorneys, Messrs. Charles A. Baker, William E. Leahy and Dr. John H. Lyon; The Harris County Medical Society, by its attorneys, Messrs. Hugh Welsh, Edward M. Burke, Seth Richardson and Adrien Busick; The Washington Academy of Surgery, by its attorneys; Messrs. John O. Warfield, Jr., Charles A. Baker and William E. Leahy; Arthur Carlisle Christie, by his attorneys, Messrs. Charles A. Baker and William E. Leahy; Coursen Baxter Conklin, by his attorneys, Messrs. Charles A. Baker and William E. Leahy; James Bayard Gregg Custis, William Dick Cutter, Robert Arthur Hooe, Thomas Ernest Mattingly, Leon Alphonse Martel, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram

Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Wallace Mason Yater and Joseph Rogers Young, each by his attorneys, Messrs. Charles A. Baker and William E. Leahy; Morris Fishbein, Roscoe Genung Leland, Olin West and William Creighton Woodward, each by his attorneys, Messrs. Edward M. Burke, Seth W. Richardson and Adrien Busick; Prentiss Willson, by his attorney, John E. Laskey, Esquire; whereupon the defendants being arraigned upon the indictment the reading whereof each specifically waives, each pleads not guilty thereto, and for trial they put themselves upon the country and the Attorney of the United States doth the like; and thereupon each defendant enters into a recognizance
41 in the sum of One Hundred Dollars to appear before this Court from day to day during the present and subsequent terms thereof, to answer the indictment herein pending against said defendant until finally disposed of, and not to depart the Court without leave; whereupon the Attorney of the United States suggests to the Court the death of the defendant, Thomas Allen Groover, and moves the Court that the suit in his case be abated by said death; which is ordered.

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42 DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Wednesday, February 5th, A. D., 1941.

The court resumes its session pursuant to adjourment: Mr. Justice Proctor, presiding.

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Come as well the Attorney of the United States, as each defendant in proper person, the defendants American Medical Association, the Medical Society of the District of Columbia, Harris County Medical Society, Washington Academy of Surgery, Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard Gregg Custis, William Dick Cutter, Morris Fishbein, Robert Arthur Hooe, Rosco Genung Leland, Thomas Ernest Mattingly, Leon Alphonse Martel, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, William Creighton Woodward, Wallace Mason Yater and Joseph

Rogers Young, each by their attorneys, Messrs. Edward M. Burke, Seth W. Richardson, Charles S. Baker, and William E. Leahy and Warren E. Magee, and defendant Prentiss Willson by his attorney, John E. Laskey, Esquire; whereupon each defendant being called for trial, it is ordered that a jury to try the issue joined herein be empaneled; and thereupon the jurors of the regular petit jury panels serving in Criminal Divisions One, Two and Three being called, sworn upon their voir dire and examined as to their competency for trying the issue joined herein, the said jury is completed and is composed of good and lawful persons of the District of Columbia, to wit:

Reuben Acton, Jr., Joseph F. Taylor, Sr., Edwin H. Ayers, Washington W. Horad, Jesse Ellis Porter, Egbert H. Irwin, Mrs. Madelyn M. McDowell, Otho T. W. King, Mrs. Edna Hayes O'Neil, Eugene B. Magruder, Columbus Facchina, Charles A. Marggraf.

43 who are sworn to well and truly try the issue joined herein; whereupon it appearing to the Court that the trial is likely to be a protracted one, two additional jurors are called and Frank E. McCrink and Lloyd F. Hadaway are sworn as alternate jurors; and thereupon the said jury are respited until the meeting of the Court tomorrow.

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44 Memoranda of Minute Entries

February 5, 1941. Jury sworn; trial begun; jury respited from day to day, to and including March 4, 1941.

March 6, 1941. Trial resumed; jury respited from day to day, to and including March 31, 1941.

April 3, 1941. Trial resumed; jury respited from day to day, to and including April 4, 1941, on which day trial was concluded.

45 [Stamp:] Filed Feb. 5, 1941, Charles E. Stewart, Clerk.

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Motion to Expunge Portions of the Indictment and to Exclude Certain Evidence

Come now the defendants, American Medical Association, The Medical Society of the District of Columbia,

Harris County Medical Society, Washington Academy of Surgery, Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard Gregg Custis, William Dick Cutter, Morris Fishbein, Robert Arthur Hooe, Rosco Genung Leland, Leon Alphonse Martel, Thomas Ernest Mattingly, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, William Creighton Woodward, Wallace Mason Yater, and Joseph Rogers Young, by their attorneys and move the Court that the following portions of the indictment be expunged and stricken and be excluded from the jury, and to exclude evidence concerning said portions of the indictment:

1. Paragraph 11.
All of paragraph 11.
2. Paragraph 12.
All of paragraph 12.
3. Paragraph 13.
All of paragraph 13.
4. Paragraph 14.
All of paragraph 14.
5. Paragraph 15.
All of paragraph 15.
6. Paragraph 17.
All of the last sentence of paragraph 17.
46 7. Paragraph 18.
All of the last sentence of paragraph 18.
8. Paragraph 19.
All of paragraph 19.
9. Paragraph 20.
All of the 7th, 8th, 9th, 10th, 11th and 12th sentences of paragraph 20 which commence with the words "The said journal" and conclude with the words "American Medical Association."

10. All of the 4th and 5th sentences of paragraph 21, which commence with the words "These so-called 'Principles of Medical Ethics' ", and conclude with the words "component societies."

11. Paragraph 22.
All of the last sentence of paragraph 22.
12. Paragraph 23.
All of the last sentence of paragraph 23.

13. Paragraph 32.

All of paragraph 32.

And for cause therefor defendants state:

1. The aforesaid portions of the indictment are not part of the charging part of said indictment and constitute vague, indefinite and uncertain conjectural conclusions and inferences from conclusions and should be treated as surplusage and disregarded.

2. Said portions of said indictment are inferentially stated, with material facts omitted, smack of a highly colored argumentive discourse against defendants and should be stricken as redundant, impertinent or scandalous.

3. Said portions of said indictment are passionate appeals and not clear, concise statements of essential facts, and should be stricken as prejudicial to the rights of the defendants.

And for other grounds appearing on face of the record.

Evidence and offers of evidence concerning said parts of said indictment should be excluded as such evi-
47 dence or offers of evidence will prejudice the rights of the defendants.

* * * * * * *

Matters of Law Intended to Be Argued in Support of the Foregoing Motion

Among the matters of law intended to be argued in support of the foregoing motion, are:

1. The designated parts of the indictment are vague, indefinite, and uncertain. They are no part of the charging part of the indictment and should be treated as surplusage, disregarded and expunged from the record.

2. The designated parts of the indictment are stated as conclusions and inferences from conclusions. Material facts are altogether lacking and inference, opinion and conjecture are freely indulged.

3. Every indictment should be confined to a clear and dispassionate statement of essential facts. Immaterial, irrelevant and impertinent matter usually is disregarded as surplusage. In the instant case, as the indictment will be submitted to the jury at the conclusion of the case, such a treatment will not suffice and prejudice will result from the mere reading of the indictment.

4. Any attempt on the part of the plaintiff to offer proof in support of any of the designated parts of the indictment, and a fortiori the admission of evidence will prejudice the rights of the defendants.

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48 DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Wednesday, February 5", A. D., 1941

The Court resumes its session pursuant to adjournment: Mr. Justice Proctor, presiding.

* * * * * * *

Now comes each defendant, American Medical Association, The Medical Society of the District of Columbia, Harris County Medical Society, Washington Academy of Surgery, Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard Gregg Custis, William Dick Cutter, Morris Fishbein, Robert Arthur Hooe, Rosco Genung Leland, Thomas Ernest Mattingly, Leon Alphonse Martel, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, William Creighton Woodward, Wallace Mason Yater and Joseph Rogers Young herein, each by their attorneys, Messrs. Edward M. Burke, Seth W. Richardson, Charles S. Baker, William E. Leahy and Warren E. Magee, and file a motion to expunge portions of the indictment and to exclude certain evidence, which motion is by the Court denied without prejudice, to which action of the Court the defendants by their attorneys pray an exception which is noted in this case.

49 [Stamp:] Filed Mar. 6, 1941, Charles E. Stewart, Clerk.

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Motion of Defendants for a Directed Verdict

Come now the defendants American Medical Association, The Medical Society of the District of Columbia, Harris County Medical Society, Washington Academy of

Surgery, Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard Gregg Custis, William Dick Cutter, Morris Fishbein, Robert Arthur Hooe, Rosco Genung Leland, Leon Alphonse Martel, Thomas Ernest Mattingly, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, William Creighton Woodward, Wallace Mason Yater, Joseph Rogers Young and Prentiss Willson, by their attorneys and move the Court to direct the jury in the above entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants.

And for cause therefor defendants state that no sufficient case has been made out against them and each of them under the indictment herein returned, to warrant and support a verdict on all or any of the charges alleged in said indictment.

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50 [Stamp:] Filed Mar. 6, 1941. Charles E. Stewart, Clerk.

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Motion of Defendants for a Directed Verdict

Come now the defendants, American Medical Association, The Medical Society of the District of Columbia, Harris County Medical Society, Washington Academy of Surgery, Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard Gregg Custis, William Dick Cutter, Morris Fishbein, Robert Arthur Hooe, Roscoe Genung Leland, Leon Alphonse Martel, Thomas Ernest Mattingly, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, William Creighton Woodward, Wallace Mason Yater, Joseph Rogers Young and Prentiss Willson, by their attorneys and move the Court to direct the jury in the above entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining Group Health Association, Inc. in its business of arranging for the provision of medical care and hospitalization to its members and their dependents on a risk sharing prepayment basis."

And for cause therefor defendants state that the testimony adduced on behalf of the prosecution herein is insufficient to support a verdict of guilty insofar as the above charge is concerned.

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51 [Stamp:] Filed Mar. 6, 1941. Charles E. Stewart, Clerk.

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Motion of Defendants for a Directed Verdict

Come now the defendants, American Medical Association, The Medical Society of the District of Columbia, Harris County Medical Society, Washington Academy of Surgery, Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard Gregg Custis, William Dick Cutter, Morris Fishbein, Robert Arthur Hooe, Roscoe Genung Leland, Leon Alphonse Martel, Thomas Ernest Mattingly, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, William Creighton Woodward, Wallace Mason Yater, Joseph Rogers Young and Prentiss Willson, by their attorneys and move the Court to direct the jury in the above entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining the members of Group Health Association, Inc. in obtaining, by cooperative efforts, adequate medical care for themselves and their dependents from doctors engaged in group medical practice on a risk sharing prepayment basis."

And for cause therefor defendants state that the testimony adduced on behalf of the prosecution herein is insufficient to support a verdict of guilty insofar as the above charge is concerned.

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52 [Stamp:] Filed Mar. 6, 1941. Charles E. Stewart, Clerk.

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Motion of Defendants for a Directed Verdict

Come now the defendants, American Medical Association, The Medical Society of the District of Columbia, Harris County Medical Society, Washington Academy of Surgery, Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard Gregg Custis, William Dick Cutter, Morris Fishbein, Robert Arthur Hooe, Roscoe Genung Leland, Leon Alphonse Martel, Thomas Ernest Mattingly, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, William Creighton Woodward, Wallace Mason Yater, Joseph Rogers Young and Prentiss Willson, by their attorneys and move the Court to direct the jury in the above entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining the doctors serving on the medical staff of said Group Health Association, Inc. in the pursuit of their callings."

And for cause therefor defendants state that the testimony adduced on behalf of the prosecution herein is insufficient to support a verdict of guilty insofar as the above charge is concerned.

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53 [Stamp:] Filed Mar. 6, 1941. Charles E. Stewart, Clerk.

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Motion of Defendants for a Directed Verdict

Come now the defendants, American Medical Association, The Medical Society of the District of Columbia, Harris County Medical Society, Washington Academy of Surgery, Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard Gregg Custis, William Dick Cutter, Morris Fishbein, Robert Arthur Hooe, Roscoe Genung Leland, Leon Alphonse Martel, Thomas Ernest Mattingly, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, William Creighton Woodward, Wallace Mason Yater, Joseph Rogers Young

and Prentiss Willson, by their attorneys and move the Court to direct the jury in the above entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining doctors (not on the medical staff of Group Health Association, Inc.) practicing in the District of Columbia, including the doctors so practicing who are made defendants herein, in the pursuit of their callings."

And for cause therefor defendants state that the testimony adduced on behalf of the prosecution herein is insufficient to support a verdict of guilty insofar as the above charge is concerned.

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54 [Stamp:] Filed Mar. 6, 1941. Charles E. Stewart, Clerk.

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Motion of Defendants for a Directed Verdict

Come now the defendants, American Medical Association, The Medical Society of the District of Columbia, Harris County Medical Society, Washington Academy of Surgery, Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard Gregg Custis, William Dick Cutter, Morris Fishbein, Robert Arthur Hooe, Roscoe Genung Leland, Leon Alphonse Martel, Thomas Ernest Mattingly, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, William Creighton Woodward, Wallace Mason Yater, Joseph Rogers Young and Prentiss Willson, by their attorneys and move the Court to direct the jury in the above entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining the Washington hospitals in the business of operating such hospitals."

And for cause therefor defendants state that the testimony adduced on behalf of the prosecution herein is insufficient to support a verdict of guilty insofar as the above charge is concerned.

. . . . . .

55 IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA—Friday March 7, A. D. 1941

The Court resumes its session pursuant to adjournment: Mr. Justice Proctor presiding.

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Come again the parties aforesaid, in manner as aforesaid, and the same jury that was respited in this case yesterday; whereupon said jury, by direction of the Court and upon their oath, say that each of the defendants Harris County Medical Society, Washington Academy of Surgery, Leon Alphonse Martel, and Joseph Rogers Young is not guilty; whereupon it is considered by the Court that the said defendants go thereof without day; and thereupon said jury, after hearing further of the evidence, is respited until the meeting of the Court Monday, March 10, A. D., 1941.

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56 [Stamped:] Filed Mar. 31, 1941, Charles E. Stewart, Clerk.

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Motion to Strike (Background)

Now come the above named defendants, jointly and severally, and move the Court to strike from the record and advise the jury not to consider any and all evidence submitted in the record relating or having reference to the so-called background of the conspiracy and consisting of evidence with respect to acts and deeds of the defendant American Medical Association, its officers and agents, occurring and transpiring outside of the District of Columbia and prior to January 1, 1937, upon the ground that such evidence and the whole thereof is incompetent, irrelevant, and immaterial to any of the issues in the above-entitled action.

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57 [Stamped:] Filed Mar. 31, 1941, Charles E. Stewart, Clerk.

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Motion to Strike (Hospitals)

Now come the above-named defendants, jointly and severally, and move the court to strike from the record and advise the jury not to consider any and all evidence submitted in the record relating or having reference to the so-called Washington hospitals for the purpose of proving that said hospitals were co-conspirators with the defendants herein upon the ground and for the reason that said evidence and the whole thereof is insufficient, as a matter of law, to make or constitute the said hospitals or any of them co-conspirators as charged by the Government and alleged in the indictment.

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58 [Stamped:] Filed Mar. 31, 1941, Charles E. Stewart, Clerk.

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Motion to Direct Verdict

Now come the defendants, jointly and severally, and move the Court to direct and advise the jury to return a verdict of not guilty in the above-entitled proceeding as to all defendants, upon the ground and for the reason that the facts, acts, and circumstances, as shown by the evidence, and the entire record herein submitted does not establish or tend to establish any violation of Section 3 of the Sherman Act relating to trade or commerce, as set forth or defined in said Act.

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59 [Stamped:] Filed Mar. 31, 1941, Charles E. Stewart, Clerk.

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Motion to Direct Verdict

Now come the above-named defendants, jointly and severally, and move the Court to direct and advise the jury to return a verdict of not guilt in the above-entitled proceeding upon the ground and for the reason that the record in said case, and the whole thereof, shows as a matter of law that Group Health Association, its officers, members

and operations were, with reference to all matters shown in the record, unlawfully engaged in the practice of medicine in the District of Columbia in violation of the laws applicable thereto, and were not, and none of them, unlawfully subject to or affected by any alleged restraints as charged and identified in the indictment.

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60 [Stamped:] Filed Mar. 31, 1941, Charles E. Stewart, Clerk.

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Motion of Defendants for a Directed Verdict

Come now the defendants American Medical Association, The Medical Society of the District of Columbia, Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard Gregg Custis, William Dick Cutter, Morris Fishbein, Robert Arthur Hooe, Roscoe Genung Leland, Thomas Ernest Mattingly, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, William Creighton Woodward, Wallace Mason Yater, and Prentiss Willson, and each of them, by their attorneys and move the Court to direct the jury in the above entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants.

And for cause therefor defendants state that no sufficient case has been made out against them and each of them under the indictment herein returned, to warrant and support a verdict on all or any of the charges alleged in said indictment.

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61 [Stamp:] Filed Mar. 31, 1941. Charles E. Stewart, Clerk.

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Motion of Defendants for a Directed Verdict

Come now the defendants, American Medical Association, The Medical Society of the District of Columbia, Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard

Gregg Custis, William Dick Cutter, Morris Fishbein, Robert Arthur Hooe, Roscoe Genung Leland, Thomas Ernest Mattingly, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, William Creighton Woodward, Wallace Mason Yater, and Prentiss Willson, and each of them, by their attorneys and move the Court to direct the jury in the above entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining Group Health Association, Inc. in its business of arranging for the provision of medical care and hospitalization to its members and their dependents on a risk sharing prepayment basis."

And for cause therefor defendants state that the testimony adduced on behalf of the prosecution herein is insufficient to support a verdict of guilty insofar as the above charge is concerned.

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62 [Stamp:] Filed Mar. 31, 1941. Charles E. Stewart, Clerk.

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Motion of Defendants for a Directed Verdict

Come now the defendants, American Medical Association, The Medical Society of the District of Columbia, Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard Gregg Custis, William Dick Cutter, Morris Fishbein, Robert Arthur Hooe, Roscoe Genung Leland, Thomas Ernest Mattingly, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, William Creighton Woodward, Wallace Mason Yater, and Prentiss Willson, and each of them, by their attorneys and move the Court to direct the jury in the above entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining the mem-

bers of Group Health Association, Inc. in obtaining, by cooperative efforts, adequate medical care for themselves and their dependents from doctors engaged in group medical practice on a risk sharing prepayment basis."

And for cause therefor defendants state that the testimony adduced on behalf of the prosecution herein is insufficient to support a verdict of guilty insofar as the above charge is concerned.

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63 [Stamp:] Filed Mar. 31, 1941. Charles E. Stewart, Clerk.

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Motion of Defendants for a Directed Verdict

Come now the defendants, American Medical Association, The Medical Society of the District of Columbia, Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard Gregg Custis, William Dick Cutter, Morris Fishbein, Robert Arthur Hooe, Roscoe Genung Leland, Thomas Ernest Mattingly, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, William Creighton Woodward, Wallace Mason Yater, and Prentiss Willson, and each of them, by their attorneys and move the Court to direct the jury in the above entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining the doctors serving on the medical staff of said Group Health Association, Inc. in the pursuit of their callings."

And for cause therefor defendants state that the testimony adduced on behalf of the prosecution herein is insufficient to support a verdict of guilty insofar as the above charge is concerned.

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64 [Stamp:] Filed Mar. 31, 1941. Charles E. Stewart, Clerk.

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Motion of Defendants for a Directed Verdict

Come now the defendants, American Medical Association, The Medical Society of the District of Columbia, Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard Gregg Custis, William Dick Cutter, Morris Fishbein, Robert Arthur Hooe, Roscoe Genung Leland, Thomas Ernest Mattingly, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, William Creighton Woodward, Wallace Mason Yater, and Prentiss Willson, and each of them, by their attorneys and move the Court to direct the jury in the above entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining doctors (not on the medical staff of Group Health Association, Inc.) practicing in the District of Columbia, including the doctors so practicing who are made defendants herein, in the pursuit of their callings."

And for cause therefor defendants state that the testimony adduced on behalf of the prosecution herein is insufficient to support a verdict of guilty insofar as the above charge is concerned.

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65 [Stamp:] Filed Mar. 31, 1941. Charles E. Stewart, Clerk.

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Motion of Defendants for a Directed Verdict

Come now the defendants, American Medical Association, The Medical Society of the District of Columbia, Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard Gregg Custis, William Dick Cutter, Morris Fishbein, Robert Arthur Hooe, Roscoe Genung Leland, Thomas Ernest Mattingly, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, William Creighton Woodward, Wallace Mason Yater, and Prentiss Willson, and each of them, by their attorneys and move the Court to direct the jury in the above entitled cause

to return a verdict of not guilty as to each and all of the aforesaid defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining the Washington hospitals in the business of operating such hospitals."

And for cause therefor defendants state that the testimony adduced on behalf of the prosecution herein is insufficient to support a verdict of guilty insofar as the above charge is concerned.

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66 DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Friday, April 4, A. D., 1941.

The Court Resumes Its Session Pursuant to Adjournment: Mr. Justice Proctor, Presiding.

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Come again the parties aforesaid, in manner as aforesaid, and the same jury that was respited in this case yesterday; whereupon after hearing the charge of the Court, the alternate juror, Frank E. McCrink, is by the Court discharged upon the final submission of the case to the jury; and thereupon the said jury upon their oath say that the defendants, American Medical Association and The Medical Society of the District of Columbia are guilty in manner and form as charged in the indictment, and that the defendants Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard Gregg Custis, William Dick Cutter, Morris Fishbein, Robert Arthur Hooe, Rosco Genung Leland, Thomas Ernest Mattingly, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, Prentiss Willson, William Creighton Woodward, and Wallace Mason Yater are not guilty; whereupon it is considered by the Court that the defendants Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard Gregg Custis, William Dick Cutter, Morris Fishbein, Robert Arthur Hooe, Roscoe Genung Leland, Thomas Ernest Mattingly, Francis Xavier McGovern, Thomas Edwin Neill,

Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, Prentiss Willson, William Creighton Woodward, and Wallace Mason Yater go thereof without day.

67 [Stamp:] Filed Apr. 7, 1941. Charles E. Stewart, Clerk.

* * * * * * *

Motion to Set Aside Verdict and for Judgment for Defendants

Come now defendants, American Medical Association, incorporated, and The Medical Society of the District of Columbia, incorporated, by their attorneys, and severally and individually and without waiving any other Motion herein filed or to be filed, move the court to set aside the verdict herein as to each defendant, and to enter judgment of not guilty as to each defendant notwithstanding the verdict herein, on the following grounds:

(1) The law holds a corporation can only act through its officers, agents and employees. In the present case as a matter of fact the evidence shows that the two corporations could only have acted by their officers, agents and employees all of whom have been acquitted. As the theory upon which a corporation can be held criminally responsible is the theory that the illegal acts and criminal intentions of its employees can be imputed to the corporation, it follows that in the present case there is no factual foundation for inferring that the corporations are guilty.

(2) The indictment having charged that the acts were committed by the individual defendants, not as indi-
68 viduals but as agents of the two corporate defendants, and the individuals having been acquitted it follows that the corporations cannot be held.

(3) The indictment does not charge nor does the proof show that the activities of the defendants, or either of them, violated any law of the United States. There is nothing to show that they concern trade or commerce in the District of Columbia within the meaning of Section 3 of the Sherman Act.

(4) The indictment shows that the activities of Group Health Association, its doctors and members, constitute the

illegal practice of medicine by a corporation, and therefore such activities could not be the subject of a conspiracy in restraint of trade under Section 3 of the Anti-Trust Law.

(5) The activities alleged and proved against the defendants, or either of them, were within their lawful rights.

(6) The jury having held the individual defendants are not guilty, there is no evidence left in the case with which to hold the corporate defendants.

(7) And for such other grounds as are apparent on the face of the record and the evidence herein and as may be argued at the hearing hereof.

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69 [Stamp:] Filed Apr. 7, 1941. Charles E. Stewart, Clerk.

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Motion In Arrest of Judgment

Come now the defendants, American Medical Association and the Medical Society of the District of Columbia, by their attorneys, and, without waiving any other motion filed or to be filed, move the court to arrest the judgment herein and hold for nought the verdict of "guilty" rendered against these defendants, and for grounds therefor, state:

(1) The activities charged to the defendants or shown by the evidence do not violate any law of the United States.

(2) The activities charged to the defendants or shown by the evidence do not concern trade or commerce in and of the District of Columbia under Section 3 of the Sherman Act.

(3) The business, operations and activities of Group Health Association, Inc., its doctors and members, and others dealing with the corporation, are part and parcel of the illegal practice of medicine and the illegal operation of insurance business and could not be the subject of unlawful restraints under Section 3 of the Sherman Act.

(4) The activities charged to the defendants or shown by the evidence are all within the lawful rights of the defendants.

70 (5) Because of the nature of the offense charged and the acquittal of all individual defendants, particularly the officers and members of defendant corporations, being the only persons charged or claimed to have acted illegally for and on behalf of the defendant corporations, the verdict is a legal anomaly, and is unsupported by the evidence, and amounts, in law, to a verdict of "Not Guilty" against said defendant corporations.

(6) The verdict is contrary to law and the evidence.

(7) And for other grounds apparent on the face of the record or in the evidence.

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71 [Stamp:] Filed Apr. 7, 1941. Charles E. Stewart, Clerk.

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Motion for New Trial

Come now the defendants, American Medical Association and the Medical Society of the District of Columbia, by their attorneys, and, without waiving any other motion filed or to be filed, move the court to set aside the verdict in the above-entitled cause and to grant these defendants a new trial and for the grounds therefor state:

(1) The evidence in the record was insufficient to find the individual defendants guilty, and it is, therefore, not sufficient to find these defendants, or either of them, guilty. There is no evidence in the record to support the verdict except the evidence applicable to the activities of the individual defendants, and the record discloses that whatever was done by these corporate defendants was done, if at all, solely through the individual defendants who have been found not guilty.

(2) The court erred in refusing to admit evidence and testimony offered by the defendants.

(3) The court erred in holding that evidence offered by the defendants relating to the so-called $40,000 payment of Home Owners Loan Corporation to Group Health Association, Inc., was irrelevant and could not be discussed to the jury in argument despite similar testimony theretofore received in evidence which remained before the jury.

72 (4) The court erred in holding that testimony concerning and relating to Medical Dental Service Bureau, operated and carried on by the local defendants, was irrelevant.

(5) The court erred in refusing to admit evidence tendered by the defendants pertaining to the solicitation of members and patients by Group Health Association, Inc., Home Owners Loan Corporation, and other persons acting on behalf of Group Health Association, Inc.

(6) The court erred in rejecting evidence offered by the defendants tendered to show advertising on behalf of Group Health Association, Inc., pertaining to the medical services of members of Group Health Association, Inc.

(7) The court erred in refusing to admit testimony tendered by the defendants tending to show subsidies paid in money, services, or other things of value, to Group Health Association, Inc., by The Twentieth Century Fund, Inc., Good Will Fund, Inc., Health Economics Association, Inc., Home Owners Loan Corporation, credit unions, and others.

(8) The court erred in restricting the evidence offered by the defendants pertaining to the quality, nature and character of the medical services proposed and furnished by the Group Health Association, Inc.

(9) The court erred in refusing evidence tendered by the defendants of the contract and the amended contract between Home Owners Loan Corporation and Group Health Association, Inc., wherein Group Health Association, Inc., as a corporation, promised to render medical services to Home Owners Loan Corporation for a consideration.

(10) The court erred in refusing to receiving testimony and evidence under offers of proof by the defendants
73 pertaining to the illegality of the operations and activities of Group Health Association, Inc., its doctors and members, and other persons doing business with the Association.

(11) The court erred in refusing to receive testimony and evidence under offers of proof by the defendants pertaining to the belief of the defendants in the illegality of the operations and activities of Group Health Association, Inc., its doctors and members, and other persons doing business with the Association.

(12) The court erred in refusing testimony offered by the defendants tending to prove that one of the reasons for the disapproval or non-approval of Group Health Association, Inc., under the constitution of the defendant Medical Society of the District of Columbia, was an understanding and belief on the part of the defendants that the said Group Health Association, Inc., was engaged in the illegal practice of medicine and the illegal operation of an insurance business in the District of Columbia and was the recipient of public moneys unlawfully paid to the said Group Health Association by the Home Owners Loan Corporation, together with the receipt by Group Health Association, Inc., of various subsidies from the various persons and agencies hereinbefore mentioned.

(13) The court erred in refusing to admit evidence tendered by the defendants showing their reasons for their argument and persuasion pertaining to Group Health Association, Inc.

(14) The court erred in refusing to admit evidence offered by the defendants pertaining to a justification on their part for any of the claimed restraints pertaining to the practice of medicine, the furnishing of medical services, the
74 activities and operations of Group Health Association, Inc., its doctors and members, or other doctors, and the business of the Washington hospitals.

(15) The court erred in rejecting evidence contained in the offers of proof of the defendants.

(16) The court erred in admitting evidence offered by the United States.

(17) The court erred in admitting in evidence the statements, oral and written, the letters and the remarks of the individual defendants heretofore found not guilty under the verdict.

(18) The court erred in receiving evidence concerning the so-called "background" of the conspiracy charged in the indictment and in overruling the motion of the defendants to strike this evidence from the record.

(19) The court erred, because of the prejudicial statement contained therein, by permitting the jury to take the indictment with the said jury into the jury room for examination and consideration by the said jury.

(20) The court erred in admitting evidence of or pertaining to the Washington hospitals and the activities thereof in relation to Group Health Association, Inc., its doctors and members, and in overruling the motion of the defendants to strike such evidence from the record.

(21) The court erred in denying the motions of these defendants and each of them for a directed verdict at the close of the Government's case.

(22) The court erred in denying the motions of these defendants and each of them for a directed verdict
75 at the close of all the evidence.

(23) The court erred in charging the jury, among others, in the following respects:

(a) In charging that the practice of medicine, the furnishing of medical services, the activities and operations of the Group Health Association, Inc., its doctors and members, and the business of the Washington hospitals were trade of the District of Columbia and each within the purview and scope of Section 3 of the Sherman Act.

(b) In charging the jury of the nature and character of the offense alleged and the type and character of evidence sufficient for a conviction.

(c) In defining "reasonable doubt."

(d) In charging the defendants could be found guilty of the offense charged in the indictment by proof of any single purpose or intent as set forth as a part of the general conspiracy alleged, and particularly that intended restraint of members of Group Health Association, Inc., was sufficient basis for a conviction.

(e) In charging that the beliefs of the defendants concerning the illegality and unethical and improper character of the operations of Group Health Association, Inc., and its economic unsoundness and financial setup, including subsidies, were irrelevant.

(f) In charging the operations of Group Health Association, Inc., were legal and irrelevant.

(g) In charging that it was unnecessary for a conviction for the United States to prove the specific intent charged in the indictment.

76 (h) In charging that aiding and abetting made a defendant a conspirator.

(i) In charging the defendant corporations had no legal right to restrain Group Health Association, Inc., or do the other activities described in the indictment.

(j) In granting and giving the charges or instructions requested by the United States.

(k) In modifying and, as so modified, giving instructions tendered by the United States.

(l) In refusing and failing to give certain charges or instructions requested by the defendants.

(m) In modifying and, as so modified, giving instructions tendered by the defendants.

(n) In failing to properly charge that restraints to be illegal under Section 3 of the Sherman Act must be direct, material, and unreasonable.

(24) The charge of the court was prejudicial, among others, in the following respects:

(a) It overemphasized to the prejudice of the defendants, the allegations of the indictment without proper protective instructions.

(b) It was highly misleading.

(c) It characterized the approved list of the defendant Medical Society of the District of Columbia as a "white list."

(24) The verdict is contrary to law.

(25) The verdict is contrary to the evidence.

(26) The verdict is contrary to the weight of the evidence.

77 (27) The verdict is a legal anomaly and is repugnant to the law and evidence.

(28) And for other reasons apparent on the face of the record or in the evidence.

* * * * * * *

78 [Stamp:] Filed Apr. 10, 1941. Charles E. Stewart, Clerk.

Stipulation

Pursuant to Law Rule No. 32(5), made applicable to motions in criminal cases by Law Rule No. 70, it is hereby Agreed and Stipulated by counsel for the respective parties hereto that time within which the United States may file answers and/or statements of points and authorities relied upon, in reply to defendants' motion for new trial, motion in arrest of judgment, and motion to set aside the verdict and for judgment for defendants, be and it is hereby extended to, and including, April 21, 1941.

John Henry Cewin, Grant W. Kelleher, Counsel for the United States. Edward M. Burke, Wm. E. Leahy, Seth W. Richardson, Chas S. Baker, Warren Magee, Counsel for Defendants.

Dated: April 9, 1941.

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79 District Court of the United States for the District of Columbia

Thursday, April 10th A. D. 1941.

The court resumes its session pursuant to adjournment:

Mr. Justice Goldsborough, presiding.

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Come as well the Attorneys of the United States, as the defendants, American Medical Association and The Medical Society of the District of Columbia herein, by their attorneys, Edward M. Burke, Seth W. Richardson, William E. Leahy, Charles S. Baker and Warren E. Magee, Esquires; whereupon the defendants' Motion to Set Aside Verdict and for Judgment, Motion in Arrest of Judgment and Motion for New Trial heretofore duly filed in the above-entitled case were considered and it is this 10th day of April, 1941, by the Court,

Ordered, for cause shown, that said Motions, and each of them, be set for argument and submission on the 2nd day of May, 1941.

James M. Proctor, Justice.

Approve: John Henry Lewin, of Counsel for the United States. William E. Leahy, of Counsel for Defendants.

80 DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Friday, May 2, A. D., 1941.

The court resumes its session pursuant to adjournment: Mr. Justice Proctor, presiding.

* * * * * * *

Come as well the Attorney of the United States, as the defendants in proper person and by its attorneys, Messrs. Seth W. Richardson, Edward M. Burke, William E. Leahy, Charles S. Baker and Warren E. Magee; whereupon the defendants' Motion to Set Aside Verdict and for Judgment for Defendants, Motion in Arrest of Judgment and Motion for a New Trial coming on to be heard, after argument by the counsel is submitted to the Court.

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81 [Stamp:] Filed May 29, 1941. Charles E. Stewart, Clerk.

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Memorandum

All pending motions in various forms looking to the granting of a new trial are severally denied. The clerk will enter the proper orders.

James M. Proctor, Justice.

Dated May 19, 1941.
Copies mailed to all attorneys.

Above includes: Motion in Arrest of Judgment. Motion Non Obstante Veredicto. Motion for New Final.

J. M. P.

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82 DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Thursday, May 29, A. D., 1941.

The court resumes its session pursuant to adjournment: Mr. Justice Proctor, presiding.

* * * * * * *

Now comes here each defendant by its attorneys, Messrs. William E. Leahy, Edward M. Burke, Seth W. Richardson, Charles S. Baker and Warren E. Magee; whereupon the

motions to set aside verdict and for judgment for defendants, the motions in arrest of judgment and the motions for a new trial, heretofore argued and submitted, are by the Court denied, to which action of the Court each defendant by its attorneys prays an exception which is noted; whereupon it is demanded of each defendant what further it has to say why the sentence of the law should not be pronounced against it and it says nothing except as it has already said; and thereupon it is considered by the Court that, for its said offense, the defendant, American Medical Association pay a fine of Two Thousand Five Hundred ($2500.00) dollars, to which action of the Court the defendant by its attorneys prays an exception which is noted and the defendant, The Medical Society of the District of Columbia pay a fine of One Thousand Five Hundred ($1500.00) dollars, to which action of the Court the defendant by its attorneys prays an exception which is noted.

85 Filed May 29, 1941. Charles E. Stewart, Clerk.
No. 63221

Criminal Indictment in One Count for Combination and Conspiracy in Vio. of Sec. 3, of the Act of Congress of July 2, 1890, Known as the Sherman Anti-Trust Act

* * * * * * *

Judgment

On this 29th day of May, A. D., 1941, came the United States Attorney, and the Defendant by its attorneys, Messrs. Edward M. Burke, William E. Leahy, Seth Richardson, Charles S. Baker and Warren Magee; and the defendant having been convicted on a verdict of guilty of the offense charged in the indictment in the above-entitled cause, to-wit: Combination and Conspiracy in Vio. of Sec. 3, of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act, and the defendant having been now asked whether it has anything to say why judgment should not be pronounced against it, and no sufficient cause to the contrary being shown or appearing to the Court, it is by the Court

Ordered and Adjudged that the defendant, American Medical Association, a corporation, pay a fine of Twenty-five Hundred ($2500.00) Dollars.

James M. Proctor, Justice. (Seal District Court of the United States for the District of Columbia.)

84 Filed May 29, 1941. Charles E. Stewart, Clerk
No. 63221

Criminal Indictment in One Count for Combination and Conspiracy in Vio. of Sec. 3, of the Act of Congress of July 2, 1890, Known as the Sherman Anti-Trust Act

* * * * * * *

Judgment

On this 29th day of May, A. D., 1941, came the United States Attorney, and the Defendant by its attorneys, Messrs. Edward M. Burke, William E. Leahy, Seth Richardson, Charles S. Baker and Warren Magee; and the defendant having been convicted on a verdict of guilty of the offense charged in the indictment in the above-entitled cause, to-wit: Combination and Conspiracy in Vio. of Sec. 3, of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act, and the defendant having been now asked whether it has anything to say why judgment should not be pronounced against it, and no sufficient cause to the contrary being shown or appearing to the Court, it is by the Court

Ordered and Adjudged that the defendant, The Medical Society of the District of Columbia, a corporation, pay a fine of Fifteen Hundred ($1500.00) Dollars.

James M. Proctor, Justice (Seal District Court of the United States for the District of Columbia.)

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85 District Court of the United States for the District of Columbia

Thursday, May 29, A. D., 1941.

The Court resumes its session pursuant to adjournment: Mr. Justice Proctor, Presiding.

* * * * * * *

On motion of American Medical Association and The Medical Society of the District of Columbia, defendants, it is ordered:

That pending proceedings on appeal or any other form of review in the Court of Appeals of the District of Columbia by said defendants and pending proceedings on cer-

tiorari or any other form of review in the Supreme Court of the United States by the said defendants, execution on the judgment and the collection of the fines and costs herein are hereby stayed without bond and the notices of appeal of said defendants when filed herein shall respectively operate as a supersedeas without bond.

Enter:

James M. Proctor, Judge.

No objection by Government. J. M. P.

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86 Filed Jun. 2, 1941, Charles E. Stewart, Clerk

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Notice of Appeal of American Medical Association, a Corporation

Name and Address of Appellant: American Medical Association, 535 North Dearborn St., Chicago, Illinois.

Name and Address of Appellant's Attorneys: Edward M. Burke, 10 South LaSalle St., Chicago, Illinois. William E. Leahy, 821 15th Street, N. W., Washington, D. C. Seth W. Richardson, 815 15th Street, N. W., Washington, D. C. Charles S. Baker, Munsey Building, Washington, D. C. Warren E. Magee, Munsey Building, Washington, D. C.

Offense: Combination and Conspiracy in Violation of Sec. 3, of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act.

Date of Judgment: May 29, 1941.

Brief Description of Judgment and Sentence: Judgment against the American Medical Association, a Corporation, on Verdict of Guilty as charged in the Indictment, and fine of $2,500.00 assessed against said corporation.

87 American Medical Association, a Corporation, the above-named appellant, hereby appeals to the Court of Appeals of the District of Columbia from the judgment above-mentioned on the grounds set forth below.

* * * * * * *

Dated, June 2, 1941.

88 Grounds of Appeal:

1. The Court erred in treating as overruled defendant's demurrer to the indictment.

2. The Court erred in denying defendant's motion to expunge certain prejudicial portions of the indictment, and to exclude evidence pertaining to said portions of the indictment.

3. The Court erred in holding throughout the trial that the individual defendants, the other corporate defendant, and this corporate defendant were co-conspirators.

4. The Court erred in admitting certain evidence offered on behalf of the United States.

5. The Court erred in refusing to admit certain evidence offered on behalf of the defendant, and in refusing and overruling written offers of proof submitted by defendant.

6. The Court erred in holding that the defendant would not be permitted to make certain defenses to the indictment.

7. The Court erred in receiving the so-called background evidence and in denying defendant's motion to strike that evidence.

8. The Court erred in holding throughout the trial that the Washington hospitals and this corporate defendant were co-conspirators.

9. The Court erred in receiving evidence pertaining to the connection of the Washington hospitals with the alleged conspiracy, and in denying defendant's motion to strike that evidence.

10. The Court erred in holding that Group Health Association, Inc., a corporation, was not engaged in the practice of medicine, contrary to law.

11. The Court erred in holding that a corporation, such as Group Health Association, Inc., could lawfully practice medicine.

12. The Court erred in holding that Group Health Association, Inc., was not illegally engaged in the insurance business in violation of law.

13. The Court erred in holding that even if Group Health Association, Inc., was illegally engaged in the practice of

medicine and insurance, defendant could not lawfully restrain it.

89 14. The Court erred in holding that, even though Group Health Association, Inc., violated the principles of medical ethics of the medical profession, nevertheless the defendant could not lawfully restrain it.

15. The Court erred in holding that, even though the acts of defendant were lawful, if done for a certain purpose, nevertheless, it was a question for the jury whether the said acts were for lawful or unlawful purposes.

16. The Court erred in failing to hold that the actions of the defendant were within its lawful rights.

17. The Court erred in failing to hold that acts of the defendant in so far as they pertained to restraints of trade were not unreasonable, direct and material.

18. The Court erred in denying the motions of defendant for a directed verdict at the close of the evidence for the United States.

19. The Court erred in denying the motions of defendant for a directed verdict at the close of all the evidence.

20. The Court erred in refusing to give to the jury as instructions certain prayers for instructions requested by defendant.

21. The Court erred in giving to the jury as instructions certain prayers for instructions requested by the United States.

22. The Court erred in charging the jury, among others, in the following respects:

(a) In charging that the practice of medicine, the furnishing of medical services, the activities and operations of the Group Health Association, Inc., its doctors and members, and the business of the Washington hospitals were trade of the District of Columbia and each within the purview and scope of Section 3 of the Sherman Act.

(b) In charging the jury of the nature and character of the offense alleged and the type and character of evidence sufficient for a conviction.

(c) In defining "reasonable doubt."

90 (d) In charging the defendants could be found guilty of the offense charged in the indictment by proof of any single purpose or intent as set forth as a part of the general conspiracy alleged, and particularly that intended restraint of members of Group Health Association, Inc., was sufficient basis for a conviction.

(e) In charging that the beliefs of the defendants concerning the illegality and unethical and improper character of the operations of Group Health Association, Inc., and its economic unsoundness and financial setup, including subsidies, were irrelevant.

(f) In charging the operations of Group Health Association, Inc., were legal and irrelevant.

(g) In charging that it was unnecessary for a conviction for the United States to prove the specific intent charged in the indictment.

(h) In charging that aiding and abetting made a defendant a conspirator.

(i) In charging the defendant corporations had no legal right to restrain Group Health Association, Inc., or do the other activities described in the indictment.

(j) In granting and giving the charges or instructions requested by the United States.

(k) In modifying and, as so modified, giving instructions tendered by the United States.

(l) In refusing and failing to give certain charges or instructions requested by the defendants.

(m) In modifying and, as so modified, giving instructions tendered by the defendants.

(n) In failing to properly charge that restraints to be illegal under Section 3 of the Sherman Act must be direct, material, and unreasonable.

(o) In overemphasizing, to the prejudice of the defendant, the allegations of the indictment without proper protective instructions.

91 (p) In giving conflicting and misleading instructions.

(q) In characterizing the approved list of the defendant Medical Society of the District of Columbia as a "white list."

23. The Court erred in holding that the profession of a physician and surgeon is "trade."

24. The Court erred in failing to hold that the evidence was insufficient to support the verdict and that the verdict was contrary to law.

25. The Court erred in failing to hold that the verdict was a legal anomaly, was impossible in law, and repugnant to the law and the evidence.

26. The Court erred in holding that each and every of the five acts of restraint charged in the indictment were restraints of trade or commerce.

27. The Court erred in holding that the charge in the indictment and the proof adduced at the trial was not a "labor dispute" within the meaning of the Clayton Act and the Norris-LaGuardia Act, and hence not within Sec. 3 of the Sherman Act.

28. The Court erred in overruling and denying defendant's motion to set aside the verdict, and to enter judgment for the defendant.

29. The Court erred in overruling and denying defendant's motion in arrest of judgment.

30. The Court erred in overruling and denying defendant's motion for a new trial.

31. The Court erred in entering judgment on the verdict and assessing a fine against the defendant.

32. The Court erred in other respects apparent of record.

* * * * * * *

92 - [Stamp:] Filed, Jun. 2, 1941. Charles E. Stewart, Clerk.

* * * * * * *

Notice of Appeal of Medical Society of the District of Columbia, a Corporation

Name and Address of Appellant: Medical Society of the District of Columbia, 1718 M Street, N. W., Washington, D. C.

Name and Address of Appellant's Attorneys: Edward M. Burke, 10 South LaSalle St., Chicago, Ill.; William E. Leahy, 821 15th Street, N. W., Washington, D. C.; Seth W. Richardson, 815 15th Street, N. W., Washington, D. C.; Charles S. Baker, Munsey Building, Washington, D. C. Warren E. Magee, Munsey Building, Washington, D. C.

Offense: Combination and Conspiracy in Violation of Sec. 3, of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act.

Date of Judgment: May 29, 1941.

Brief Description of Judgment and Sentence: Judgment against the Medical Society of the District of Columbia, a Corporation, on Verdict of Guilty as charged in the Indictment, and fine of $1,500.00 assessed against said corporation.

93 Medical Society of the District of Columbia, a Corporation, the above-named appellant, hereby appeals to the Court of Appeals of the District of Columbia from the judgment above-mentioned on the grounds set forth below.

* * * * * * *

Dated June 2, 1941.

94 Grounds of Appeal:

1. The Court erred in treating as overruled defendant's demurrer to the indictment.

2. The Court erred in denying defendant's motion to expunge certain prejudicial portions of the indictment, and to exclude evidence pertaining to said portions of the indictment.

3. The Court erred in holding throughout the trial that the individual defendants, the other corporate defendant, and this corporate defendant were co-conspirators.

4. The Court erred in admitting certain evidence offered on behalf of the United States.

5. The Court erred in refusing to admit certain evidence offered on behalf of the defendant, and in refusing and overruling written offers of proof submitted by defendant.

6. The Court erred in holding that the defendant would not be permitted to make certain defenses to the indictment.

7. The Court erred in receiving the so-called background evidence and in denying defendant's motion to strike that evidence.

8. The Court erred in holding throughout the trial that the Washington hospitals and this corporate defendant were co-conspirators.

9. The Court erred in receiving evidence pertaining to the connection of the Washington hospitals with the alleged conspiracy, and in denying defendant's motion to strike that evidence.

10. The Court erred in holding that Group Health Association, Inc., a corporation, was not engaged in the practice of medicine, contrary to law.

11. The Court erred in holding that a corporation, such as Group Health Association, Inc., could lawfully practice medicine.

12. The Court erred in holding that Group Health Association, Inc., was not illegally engaged in the insurance business in violation of law.

13. The Court erred in holding that even if Group Health Association, Inc., was illegally engaged in the practice of medicine and insurance, defendant could not lawfully restrain it.

95 14. The Court erred in holding that, even though Group Health Association, Inc., violated the principles of medical ethics of the medical profession, nevertheless the defendant could not lawfully restrain it.

15. The Court erred in holding that, even though the acts of defendant were lawful, if done for a certain purpose, nevertheless it was a question for the jury whether the said acts were for lawful or unlawful purposes.

16. The Court erred in failing to hold that the actions of the defendant were within its lawful rights.

17. The Court erred in failing to hold that acts of the defendant in so far as they pertained to restraints of trade were not unreasonable, direct and material.

18. The Court erred in denying the motions of defendant for a directed verdict at the close of the evidence for the United States.

19. The Court erred in denying the motions of defendant for a directed verdict at the close of all the evidence.

20. The Court erred in refusing to give to the jury as instructions certain prayers for instructions requested by defendant.

21. The Court erred in giving to the jury as instructions certain prayers for instructions requested by the United States.

22. The Court erred in charging the jury, among others, in the following respects:

(a) In charging that the practice of medicine, the furnishing of medical services, the activities and operations of the Group Health Association, Inc., its doctors and members, and the business of the Washington hospitals were trade of the District of Columbia and each within the purview and scope of Section 3 of the Sherman Act.

(b) In charging the jury of the nature and character of the offense alleged and the type and character of evidence sufficient for a conviction.

(c) In defining "reasonable doubt."

96 (d) In charging the defendants could be found guilty of the offense charged in the indictment by proof of any single purpose or intent as set forth as a part of the general conspiracy alleged, and particularly that intended restraint of members of Group Health Association, Inc., was sufficient basis for a conviction.

(e) In charging that the beliefs of the defendants concerning the illegality and unethical and improper character of the operations of Group Health Association, Inc., and its economic unsoundness and financial setup, including subsidies, were irrelevant.

(f) In charging the operations of Group Health Association, Inc., were legal and irrelevant.

(g) In charging that it was unnecessary for a conviction for the United States to prove the specific intent charged in the indictment.

(h) In charging that aiding and abetting made a defendant a conspirator.

(i) In charging the defendant corporations had no legal right to restrain Group Health Association, Inc., or do the other activities described in the indictment.

(j) In granting and giving the charges or instructions requested by the United States.

(k) In modifying and, as so modified, giving instructions tendered by the United States.

(l) In refusing and failing to give certain charges or instructions requested by the defendants.

(m) In modifying and, as so modified, giving instructions tendered by the defendants.

(n) In failing to properly charge that restraints to be illegal under Section 3 of the Sherman Act must be direct, material, and unreasonable.

(o) In overemphasizing, to the prejudice of the defendant, the allegations of the indictment without proper protective instructions.

97 (p) In giving conflicting and misleading instructions.

(q) In characterizing the approved list of the defendant Medical Society of the District of Columbia as a "white list."

23. The Court erred in holding that the profession of a physician and surgeon is "trade."

24. The Court erred in failing to hold that the evidence was insufficient to support the verdict and that the verdict was contrary to law.

25. The Court erred in failing to hold that the verdict was a legal anomaly, was impossible in law, and repugnant to the law and the evidence.

26. The Court erred in holding that each and every of the five acts of restraint charged in the indictment were restraints of trade or commerce.

27. The Court erred in holding that the charge in the indictment and the proof adduced at the trial was not a

"labor dispute" within the meaning of the Clayton Act and the Norris-LaGuardia Act, and hence not within Sec. 3 of the Sherman Act.

28. The Court erred in overruling and denying defendant's motion to set aside the verdict, and to enter judgment for the defendant.

29. The Court erred in overruling and denying defendant's motion in arrest of judgment.

30. The Court erred in overruling and denying defendant's motion for a new trial.

31. The Court erred in entering judgment on the verdict and assessing a fine against the defendant.

32. The Court erred in other respects apparent of record.

* * * * * * *

98 [Stamp:] Filed Jun. 3, 1941, Charles E. Stewart, Clerk.

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Order Extending Time Within Which to File Bill of Exceptions

On motion of defendants, American Medical Association and The Medical Society of the District of Columbia, it is ordered:

That American Medical Association, a corporation, and The Medical Society of the District of Columbia, a corporation, defendants, have until and including November 1, 1941 to settle and file herein a bill of exceptions.

Enter.

James M. Proctor, Judge.

* * * * * * *

99 [Stamp:] Filed Oct. 24, 1941, Charles E. Stewart, Clerk.

* * * * * * *

Assignment of Errors

Now comes the American Medical Association, a corporation, defendant, by its attorneys, and for an assignment of errors in the above-entitled cause, states that the Court erred as follows:

1. In overruling the demurrer to the indictment.

2. In denying defendants' written motion at the beginning of the trial to strike certain specific portions of the indictment pertaining to the so-called "background" and other specific portions of the indictment which are argumentative and prejudicial, and to exclude evidence pertaining thereto.

3. In holding throughout the trial that a prima facie conspiracy with means as charged in the indictment had been established against each and all of the defendants and the Washington hospitals, and against each and all of the defendants and persons not named in the indictment.

4. In admitting evidence offered on behalf of the United States as follows:

Evidence pertaining to the so-called "background" of the alleged conspiracy; evidence of correspondence, conversations, acts, matters and things that occurred before the date of the alleged conspiracy; evidence of correspondence and conversations between certain defendants and the Washington hospitals and their employees and persons not named in the indictment and not parties to the alleged conspiracy; evidence of correspondence and conversations between persons, none of whom were parties to the alleged conspiracy; evidence developed through questions improper in form, evidence that was incompetent, irrelevant and immaterial, and letters, records, minutes, and documentary evidence not properly, sufficiently and lawfully identified.

5. In denying defendants' written motions to strike certain evidence pertaining to "background" and "hospitals" and in refusing defendants' oral motions to strike certain evidence.

6. In denying and refusing defendants' written and oral offers of proof and in refusing to admit evidence on behalf of the defendants as follows:

Evidence tending to show that Group Health Associations, Inc., was an illegal corporation, illegally practicing medicine in the District of Columbia and illegally engaged in the operation of an insurance company, and that defendants had knowledge thereof; evidence of the belief of defendants that Group Health Association, Inc., was operat-

ing illegally as aforesaid; evidence that Group Health Association, Inc., as a corporation, contracted with its members to furnish them medical service and did furnish them such medical service, and that defendants had knowledge thereof; evidence that Group Health Association, Inc., as a corporation, sold medical services to Home Owners Loan Corporation, as a corporation, and that defendants had knowledge thereof; evidence that Home Owners Loan Corporation paid money and things of value to Group Health Association, Inc., and delivered furniture, fixtures and personal property of the United States to Group Health Association, Inc., contrary to law, and that defendants had knowledge thereof; evidence that Group Health Association, Inc., as a corporation, employed doctors to render medical services to its employees and said doctors did so render such medical service and that defendants had knowledge thereof; evidence tending to show that Group Health Association, Inc., was not a mere broker between its members and the doctors who treated them and that defendants had knowledge thereof; evidence that defendants had been advised by counsel and public law
101 officers of the District of Columbia, the General Accounting Office of the United States, the Acting Comptroller General of the United States, members of the House of Representatives, and members of the Senate, of the United States, that Group Health Association, Inc., was operating illegally as aforesaid; evidence that Group Health Association, Inc., and its officials and employees, and Home Owners Loan Corporation, and its officials and employees, were of the opinion that during a portion of the time covered by the indictment, Group Health Association, Inc., was operating illegally as aforesaid; evidence tending to show that Group Health Association, Inc., was subsidized by the Twentieth Century Fund, Inc., a corporation, Health Economics Association, a corporation, Good Will Fund, Inc., a corporation, and the joint committee of Good Will Fund, Inc., and the Twentieth Century Fund, Inc., by Home Owners Loan Corporation and other sources, and that defendants had knowledge thereof; evidence that Home Owners Loan Corporation and other departments of the Federal Government coerced their employees to join Group Health Association, Inc., and that defendants had knowledge thereof; evidence that Group Health Association, Inc., and others on its behalf solicited persons to join

Group Health Association, Inc., to whom medical services were to be rendered, and that defendants had knowledge thereof; evidence that Group Health Association, Inc., advertised for its members to whom medical services were to be rendered, and that defendants had knowledge thereof; evidence that members of Group Health Association, Inc., assigned to Group Health Association, Inc., portions of their salaries or wages due or to become due from Home Owners Loan Corporation, contrary to the Federal Statute and to law, and that defendants had knowledge thereof; evidence that Group Health Association, Inc., could not deliver a good quality of medical service at the price charged, and as constituted, could not and did not deliver a good quality of medical service, irrespective of the price charged and that the defendants had knowledge thereof; evidence that defendants, upon a full and true disclosure of facts, had been advised by counsel that all their
102 acts and doings as charged in the indictment and disclosed by the evidence were lawful; evidence that the delivery of medical services by Group Health Association, Inc., employee doctors was controlled by laymen and the defendants had knowledge thereof; evidence tending to show that the purpose and intent of the defendants in whatever they did was to advance their own interests and protect their medical society or association and the rules of ethics of the medical profession, and to repel an assault on the same by Group Health Association, Inc., and not to conspire with means to illegally restrain trade, as alleged, and all other evidence tendered by the defendants and refused by the Court.

7. In overruling the motions of the defendants for directed verdicts at the close of the evidence for the United States.

8. In overruling the motions of the defendants for directed verdicts at the conclusion of all the evidence.

9. In giving to the jury as instructions certain prayers for instructions requested by the United States, as follows:

Government's requested instructions numbered 1, 2, 3, 4, 7, 10, 11, 12, 13, 14, 22, and 23.

10. In refusing to give to the jury as instructions certain prayers for instructions requested by the defendants as follows:

Defendants' requested instructions numbered 1, 2, 3, 5,

6, 8, 9, 10, 14, 15, 16, 17, 18, 23, 31, 32, 33, 36, 38, 40, 41, 42, 43, 45, 46, 49, 50, 51, 54, 55, 56, 57, 60, 61, 63, 64, 65, and 66.

11. In charging the jury, among others in the following respects:

(A) In charging that the practice of medicine, the furnishing of medical services, the activities of Group Health Association, Inc., its members, its doctor employees, doctors other than those employed by Group Health Association, Inc., and the Washington hospitals, were "trade" within the meaning of that word in Section 3 of the Sherman Act.

(B) In charging the jury of the nature and char-
103 acter of the offense alleged and the type and character of evidence sufficient for a conviction.

(C) In charging that if a person knows of a conspiracy to restrain trade and then acts in furtherance thereof he thereby becomes a party to such conspiracy.

(D) In charging that the defendants could be found guilty of the offense charged in the indictment by proof of any single purpose or intent as set forth in said indictment as a part of the general conspiracy there alleged, and particularly in charging that intended restraint of members of Group Health Association, Inc., was a sufficient basis for a conviction.

(E) In charging in substance and effect that the practices of Group Health Association, Inc., in the following respects were immaterial and irrelevant and not to be considered by the jury: the practice of medicine as a corporation; operation of an insurance company contrary to law; receipt of money and personal property from Home Owners Loan Corporation; sale of medical services from Group Health Association, Inc., to Home Owners Loan Corporation; receipt of subsidies from public and private funds; employment of doctors by a corporation; illegal assignment of Government salaries to Group Health Association, Inc.; coercion by Government departments on their employes to join Group Health Association, Inc.; solicitation of members by Group Health Association, Inc.; advertising for members by Group Health Association, Inc.; inability of Group Health Association, Inc., to render good quality of medical service at the price charged or as constituted at any price and that Group Health Association, Inc., did not render a good quality of medical care, and that rendering of medical serv-

ices by Group Health Association, Inc., was controlled by laymen.

(F) In defining "reasonable doubt."

(G) In defining a conspiracy to restrain trade under the Sherman Act.

(H) In charging that the beliefs of the defendants concerning the illegality and unethical and improper character of the operations of Group Health Association, Inc., and its economic unsoundness and financial setup, including subsidies, were irrelevant.

(I) In charging that the operations of Group
104 Health Association, Inc., were legal and that the question of the legality of the operations and activities of Group Health Association, Inc., was irrelevant and not to be considered by the jury.

(J) In charging that it was unnecessary for a conviction for the United States to prove the specific intent charged in the indictment.

(K) In charging that aiding and abetting made a defendant a conspirator.

(L) In charging that defendants could be found guilty under the indictment if the jury believed that they conspired to restrain in any one of the particulars charged in the indictment, whereas the law requires that they be found guilty of conspiracy to restrain in all five of the respects alleged in the indictment before they can be found guilty under the indictment herein. The conspiracy charged is one conspiracy, not five conspiracies.

(M) In charging that if the jury believed that the defendants were guilty of conspiracy to restrain members of Group Health Association, Inc., as alleged, they could be found guilty of the conspiracy charged in the indictment. The same with reference to each of the other four restraints charged in the indictment.

(N) In failing to include in the instructions the important element that the alleged conspiracy must have included the means alleged in the indictment.

(O) In failing to charge that before a party can be guilty of a conspiracy to violate the Sherman Act the alleged con-

spirator must have agreed as a part of the conspiracy on the means or plan to be used to carry out conspiracy. In the absence of means or plan there is no conspiracy under the Sherman Act.

(P) In failing to properly charge that a conspiracy to restrain, to be illegal under the Sherman Act, must be direct, material and unreasonable.

(Q) In over-emphasizing, to the prejudice of the defendants, the allegations of the indictment without giving proper protective instructions.

(R) In giving conflicting and misleading instructions.

(S) In giving instructions that applied to a substantive violation of the Sherman Act and not to a conspiracy to violate the Sherman Act as charged in the indictment.

(T) In characterizing in the instructions the approved list of the defendant Medical Society of the District of Columbia as a "white list."

12. In overruling defendants' motion to set aside the verdict and to enter judgment for the defendants.

13. In overruling defendants' motion in arrest of judgment.

14. In overruling defendants' motion for a new trial. The evidence of, pertaining to and adduced through the individual defendants, who were found "not guilty" was inadmissible and hearsay evidence as to the corporate defendants and cannot be relied upon to support the verdict of "guilty" against the corporate defendants. The mass of such evidence was tremendous and highly prejudicial and was before the jury when they were considering and arriving at their verdict on the guilt or innocence of the corporate defendants, and, therefore, the corporate defendants did not receive an adequate separate consideration of their defenses.

15. In holding that even though acts of the defendants were lawful if done for certain purposes, and even though defendants testified that their acts were done for lawful purposes and there was no evidence to the contrary, nevertheless, it was a question for the jury to determine whether

the acts of the defendants constituted a conspiracy with means to restrain trade as alleged in the indictment.

16. In holding that the activities of Group Health Association, Inc., its members, its doctor employees, doctors other than those employed by Group Health Association, Inc., including the individual defendants, and that part of the operation of hospitals pertaining to the activities of Group Health Association, Inc., were "trade" within the meaning of Section 3 of the Sherman Act.

17. In holding that the charge in the indictment and the proof adduced at the trial was not a "labor dispute" within the meaning of the Clayton Act and the Norris-LaGuardia Act, and hence not within the purview of Section 3 of the Sherman Act.

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18. In failing to hold that the acts and doings of the defendants, did not pertain to or refer to unreasonable restraints, nor did they pertain to or refer to direct or material restraints.

19. In failing to hold the evidence was insufficient to support the verdict and that the verdict was contrary to law. The evidence, of, pertaining to and adduced through the individual defendants who were found "not guilty" was inadmissible and hearsay evidence as to the corporate defendants and cannot be relied upon to support the verdict of "guilty" against the corporate defendants, and, therefore, the Court should have granted the motions of the corporate defendants after verdict, to set aside the verdict against them and enter judgment of "not guilty" in their behalf, or should have granted the motion of the corporate defendants after verdict for a new trial.

20. In failing to apply the law of principal and agent, master and servant, and the doctrine of imputation to this case, particularly with reference to the situation created by the verdict finding not guilty all agents and servants and finding guilty the principal or master (each corporate defendant).

21. In failing to hold the verdict a legal anomaly, impossible in law and repugnant to the law and the evidence, because the defendants are corporations and all the individuals through whom defendants are charged with participation in the misdemeanor alleged in the indictment were found "not guilty".

22. In failing to hold that defendants and each of them did not become a party to a conspiracy with means or a plan to unreasonably, directly and materially restrain trade in the District of Columbia.

23. In construing the indictment and evidence as setting forth and establishing a violation by the defendants
107 of a conspiracy to restrain trade under Section 3 of the Sherman Act.

24. In its construction and interpretation of the Sherman Act, the Clayton Act and the Norris-LaGuardia Act.

25. In its construction and interpretation of the Healing Arts Practice Act for the District of Columbia (D. C. Code 1929, Title 5, Section 179).

26. In its construction and interpretation of the Benevolent Corprations Act for the District of Columbia (D. C. Code 1929, Title 5, Chapter 5).

27. In entering judgment on the verdict and assessing fines against the defendants.

28. In other respects apparent of record.

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108 [Stamp:] Filed Oct. 24, 1941. Charles E. Stewart, Clerk.

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Assignment of Errors

Now comes the Medical Society of the District of Columbia, a corporation, defendant, by its attorneys, and for an assignment of errors in the above-entitled cause, states that the Court erred as follows:

1. In overruling the demurrer to the indictment.

2. In denying defendants' written motion at the beginning of the trial to strike certain specific portions of the indictment pertaining to the so-called "background" and other specific portions of the indictment which are argumentative and prejudicial, and to exclude evidence pertaining thereto.

3. In holding throughout the trial that a prima facie conspiracy with means as charged in the indictment had been established against each and all of the defendants and the Washington hospitals, and against each and all of the defendants and persons not named in the indictment.

4. In admitting evidence offered on behalf of the United States as follows:

Evidence pertaining to the so-called "background" of the alleged conspiracy; evidence of correspondence, conversations, acts, matters and things that occurred before the date of the alleged conspiracy; evidence of correspondence and conversations between certain defendants and the Washington hospitals and their employees and persons not named in the indictment and not parties to the al-
109 leged conspiracy; evidence of correspondence and conversations between persons, none of whom were parties to the alleged conspiracy; evidence developed through questions improper in form, evidence that was incompetent, irrelevant and immaterial, and letters, records, minutes, and documentary evidence not properly, sufficiently and lawfully identified.

5. In denying defendants' written motions to strike certain evidence pertaining to "background" and "hospitals" and in refusing defendants' oral motions to strike certain evidence.

6. In denying and refusing defendants' written and oral offers of proof and in refusing to admit evidence on behalf of the defendants as follows:

Evidence tending to show that Group Health Association, Inc., was an illegal corporation, illegally practicing medicine in the District of Columbia and illegally engaged in the operation of an insurance company, and that defendants had knowledge thereof; evidence of the belief of defendants that Group Health Association, Inc., was operating illegally as aforesaid; evidence that Group Health Association, Inc., as a corporation, contracted with its members to furnish them medical service and did furnish them such medical service, and that defendants had knowledge thereof; evidence that Group Health Association, Inc., as a corporation, sold medical services to Home Owners Loan Corporation, as a corporation, and that defendants had

knowledge thereof; evidence that Home Owners Loan Corporation paid money and things of value to Group Health Association, Inc., and delivered furniture, fixtures and personal property of the United States to Group Health Association, Inc., contrary to law, and that defendants had knowledge thereof; evidence that Group Health Association, Inc., as a corporation, employed doctors to render medical services to its employees and said doctors did so render such medical service and that defendants had knowledge thereof; evidence tending to show that Group Health Association, Inc., was not a mere broker between its members and the doctors who treated them and that defendants had knowledge thereof; evidence that defendants had been advised by counsel and public law officers of the District of Co-
110 lumbia, the General Accounting Office of the United States, the Acting Comptroller General of the United States, members of the House of Representatives, and members of the Senate of the United States, that Group Health Association, Inc., was operating illegally as aforesaid; evidence that Group Health Association, Inc., and its officials and employees, and Home Owners Loan Corporation, and its officials and employees, were of the opinion that during a portion of the time covered by the indictment, Group Health Association, Inc., was operating illegally as aforesaid; evidence tending to show that Group Health Association, Inc., was subsidized by the Twentieth Century Fund, Inc., a corporation, Health Economics Association, a corporation, Good Will Fund, Inc., a corporation, and the joint committee of Good Will Fund, Inc., and the Twentieth Century Fund, Inc., by Home Owners Loan Corporation and other sources, and that defendants had knowledge thereof; evidence that Home Owners Loan Corporation and other departments of the Federal Government coerced their employees to join Group Health Association, Inc., and that defendants had knowledge thereof; evidence that Group Health Association, Inc., and others on its behalf solicited persons to join Group Health Association, Inc., to whom medical services were to be rendered, and that defendants had knowledge thereof; evidence that Group Health Association, Inc., advertised for its members to whom medical services were to be rendered, and that defendants had knowledge thereof; evidence that members of Group Health Association, Inc., assigned to Group Health Association, Inc., portions of their salaries or wages due or to become

due from Home Owners Loan Corporation, contrary to the Federal Statute and to law, and that defendants had knowledge thereof; evidence that Group Health Association, Inc., could not deliver a good quality of medical service at the price charged, and, as constituted, could not and did not deliver a good quality of medical service, irrespective of the price charged, and that the defendants had knowledge thereof; evidence that defendants, upon a full and true disclosure of facts, had been advised by counsel that all their acts and doings as charged in the indictment
111 and disclosed by the evidence were lawful; evidence that the delivery of medical services by Group Health Association, Inc., employee doctors was controlled by laymen and the defendants had knowledge thereof; evidence tending to show that the purpose and intent of the defendants in whatever they did was to advance their own interests and protect their medical sociey or association and the rules of ethics of the medical profession, and to repel an assault on the same by Group Health Association, Inc., and not to conspire with means to illegally restrain trade, as alleged, and all other evidence tendered by the defendants and refused by the Court.

7. In overruling the motions of the defendants for directed verdicts at the close of the evidence for the United States.

8. In overruling the motions of the defendants for directed verdicts at the conclusion of all the evidence.

9. In giving to the jury as instructions certain prayers for instructions requested by the United States, as follows:

Government's requested instructions numbered 1, 2, 3, 4, 7, 10, 11, 12, 13, 14, 22, and 23.

10. In refusing to give to the jury as instructions certain prayers for instructions requesed by the defendants as follows:

Defendants' requested instructions numbered 1, 2, 3, 5, 6, 8, 9, 10, 14, 15, 16, 17, 19, 23, 31, 32, 33, 36, 38, 40, 41, 42, 43, 45, 46, 49, 50, 51, 54, 55, 56, 57, 60, 61, 63, 64, 65, and 66.

11. In charging the jury, among others, in the following respects:

(A) In charging that the practice of medicine, the furnishing of medical services, the activities of Group Health As-

sociation, Inc., its members, its doctor employees, doctors other than those employed by Group Health Association, Inc., and the Washington hospitals, were "trade" within the meaning of that word in Section 3 of the Sherman Act.

(B) In charging the jury of the nature and character of the offense alleged and the type and character of evidence sufficient for a conviction.

(C) In charging that if a person knows of a conspiracy to restrain trade and then acts in furtherance thereof he thereby becomes a party to such conspiracy.

(D) In charging that the defendants could be found guilty of the offense charged in the indictment by proof of any single purpose or intent as set forth in said indictment as a part of the general conspiracy there alleged, and particularly in charging that intended restraint of members of Group Health Association, Inc., was a sufficient basis for a conviction.

(E) In charging in substance and effect that the practices of Group Health Association, Inc., in the following respects were immaterial and irrelevant and not to be considered by the jury: the practice of medicine as a corporation; operation of an insurance company contrary to law; receipt of money and personal property from Home Owners Loan Corporation; sale of medical services from Group Health Association, Inc., to Home Owners Loan Corporation; receipt of subsidies from public and private funds; employment of doctors by a corporation; illegal assignment of Government salaries to Group Health Association, Inc.; coercion by Government departments on their employees to join Group Health Association, Inc.; solicitation of members by Group Health Association, Inc.; advertising for members by Group Health Association, Inc.; inability of Group Health Association, Inc., to render good quality of medical service at the price charged or as constituted at any price and that Group Health Association, Inc., did not render a good quality of medical care, and that rendering of medical services by Group Health Association, Inc., was controlled by laymen.

(F) In defining "reasonable doubt."

(G) In defining a conspiracy to restrain trade under the Sherman Act.

(H) In charging that the beliefs of the defendants concerning the illegality and unethical and improper character of the operations of Group Health Association, Inc., and its economic unsoundness and financial setup, including subsidies, were irrelevant.

(I) In charging that the operations of Group
113 Health Association, Inc., were legal and that the question of the legality of the operations and activities of Group Health Association, Inc., was irrelevant and not to be considered by the jury.

(J) In charging that it was unnecessary for a conviction for the United States to prove the specific intent charged in the indictment.

(K) In charging that aiding and abetting made a defendant a conspirator.

(L) In charging that defendants could be found guilty under the indictment if the jury believed that they conspired to restrain in any one of the particulars charged in the indictment, whereas the law requires that they be found guilty of conspiracy to restrain in all five of the respects alleged in the indictment before they can be found guilty under the indictment herein. The conspiracy charged is one conspiracy, not five conspiracies.

(M) In charging that if the jury believed that the defendants were guilty of conspiracy to restrain members of Group Health Association, Inc., as alleged, they could be found guilty of the conspiracy charged in the indictment. The same with reference to each of the other four restraints charged in the indictment.

(N) In failing to include in the instructions the important element that the alleged conspiracy must have included the means alleged in the indictment.

(O) In failing to charge that before a party can be guilty of a conspiracy to violate the Sherman Act the alleged conspirator must have agreed as a part of the conspiracy on the means or plan to be used to carry out conspiracy. In the absence of means or plan there is no conspiracy under the Sherman Act.

(P) In failing to properly charge that a conspiracy to restrain, to be illegal under the Sherman Act, must be direct, material and unreasonable.

(Q) In over-emphasizing, to the prejudice of the defendants, the allegations of the indictment without giving proper protective instructions.

(R) In giving conflicting and misleading instructions.

(S) In giving instructions that applied to a substantive violation of the Sherman Act and not to a conspiracy to violate the Sherman Act as charged in the indictment.

(T) In characterising in the instructions the approved list of the defendant Medical Society of the District of Columbia as a "white list."

12. In overruling defendants' motion to set aside the verdict and to enter judgment for the defendants.

13. In overruling defendants' motion in arrest of judgment.

14. In overruling defendants' motion for a new trial. The evidence of, pertaining to and adduced through the individual defendants who were found "not guilty" was inadmissible and hearsay evidence as to the corporate defendants and cannot be relied upon to support the verdict of "guilty" against the corporate defendants. The mass of such evidence was tremendous and highly prejudicial and was before the jury when they were considering and arriving at their verdict on the guilt or innocence of the corporate defendants, and, therefore, the corporate defendants did not receive an adequate separate consideration of their defenses.

15. In holding that even though acts of the defendants were lawful if done for certain purposes, and even though defendants testified that their acts were done for lawful purposes and there was no evidence to the contrary, nevertheless, it was a question for the jury to determine whether the acts of the defendants constituted a conspiracy with means to restrain trade as alleged in the indictment.

16. In holding that the activities of Group Health Association, Inc., its members, its doctor employees, doctors other than those employed by Group Health Association, Inc., including the individual defendants, and that part of the operation of hospitals pertaining to the activities of Group Health Association, Inc., were "trade" within the meaning of Section 3 of the Sherman Act.

17. In holding that the charge in the indictment and the proof adduced at the trial was not a "labor dispute" within the meaning of the Clayton Act and the Norris-LaGuardia Act, and hence not within the purview of Section 3 of the Sherman Act.

18. In failing to hold that the acts and doings of the defendants, did not pertain to or refer to unreasonable restraints, nor did they pertain to or refer to direct or material restraints.

19. In failing to hold the evidence was insufficient to support the verdict and that the verdict was contrary to law. The evidence, of, pertaining to and adduced through the individual defendants who were found "not guilty" was inadmissible and hearsay evidence as to the corporate defendants and cannot be relied upon to support the verdict of "guilty" against the corporate defendants, and, therefore, the Court should have granted the motions of the corporate defendants after verdict, to set aside the verdict against them and enter judgment of "not guilty" in their behalf, or should have granted the motion of the corporate defendants after verdict for a new trial.

20. In failing to apply the law of principal and agent, master and servant, and the doctrine of imputation to this case, particularly with reference to the situation created by the verdict finding not guilty all agents and servants and finding guilty the principal or master (each corporate defendant).

21. In failing to hold the verdict a legal anomaly, impossible in law and repugnant to the law and the evidence, because the defendants are corporations and all the individuals through whom defendants are charged with participation in the misdemeanor alleged in the indictment were found "not guilty".

22. In failing to hold that defendants and each of them did not become a party to a conspiracy with means or a plan to unreasonably, directly and materially restrain trade in the District of Columbia.

23. In construing the indictment and evidence as setting forth and establishing a violation by the defendants
116 of a conspiracy to restrain trade under Section 3 of the Sherman Act.

24. In its construction and interpretation of the Sherman Act, the Clayton Act and the Norris-LaGuardia Act.

25. In its construction and interpretation of the Healing Arts Practice Act for the District of Columbia (D. C. Code 1929, Title 5, Section 179).

26. In its construction and interpretation of the Benevolent Corporations Act for the District of Columbia (D. C. Code 1929, Title 5, Chapter 5).

27. In entering judgment on the verdict and assessing fines against the defendants.

28. In other respects apparent of record.

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117 [Stamp:] Filed Oct. 20, 1941. Charles E. Stewart, Clerk.

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Designation of Record

Now comes the American Medical Association, a corporation, defendant (appellant) in the above entitled cause, by its attorneys and designates the parts of the record which it desires to have included in the transcript, said parts being considered sufficient for the questions raised on appeal, namely:

(1) The indictment filed December 20, 1938.

(2) Demurrer of defendants to the indictment, filed March 29, 1939.

(3) Minute entry of judgment entered July 26, 1939, sustaining the demurrer of the defendants and dismissing the indictment.

(4) Notice of appeal of United States of America filed July 31, 1939.

(5) Mandate from Court of Appeals of the District of Columbia filed June 6, 1940, reversing the judgment of the District Court and remanding this cause for further proceedings not inconsistent with the opinion of said Court of Appeals.

(6) Arraignment of June 14, 1940.

(7) Pleas of not guilty of all of the defendants of June 14, 1940.

(8) Minute entries showing impaneling of jury of February 5, 1941.

(9) Minute entries showing trial by jury beginning February 5, 1941 and concluding April 4, 1941.

(10) Motion to expunge portions of the indictment and to exclude certain evidence, filed February 5, 1941. Minute entry on said motion.

118 (11) Motion of defendants for a directed verdict filed March 6, 1941. Minute entry on said motions.

(12) Verdict of the jury by direction of the court entered March 10, 1941, finding certain defendants not guilty.

(13) Motion to strike (background), and motion to strike (hospitals), filed March 31, 1941.

(14) Motions of defendants for a directed verdict filed March 31, 1941. Minute entry on said motions.

(15) Verdict of jury of April 4, 1941, finding American Medical Association and The Medical Society of the District of Columbia "guilty", and all other defendants "not guilty".

(16) Motion of defendants to set aside verdict and for judgment, filed April 7, 1941.

(17) Motion of defendants in arrest of judgment, filed April 7, 1941.

(18) Motion of defendants for a new trial, filed April 7, 1941.

(19) Stipulation of counsel filed April 10, 1941. Order of April 10, 1941, setting May 2, 1941, as the date for the argument and submission of defendants' motion to set aside the verdict and for judgment, motion in arrest of judgment, and motion for a new trial.

(20) Minute entry of order of May 2, 1941, showing defendant's motion to set aside the verdict and for judgment, motion in arrest of judgment, and motion for new trial argued and submitted to the court on said date.

(21) Minute entry (and memorandum of court) denying motions of defendants to set aside verdict and for judgment, in arrest of judgment and for a new trial, entered May 29, 1941.

(22) Order, judgment, fine and minute entry of the final judgment on the verdict of May 29, 1941.

(23) Order staying execution and for a supersedeas, entered May 29, 1941.

(24) Order of June 3, 1941, extending the time of defendants to file a Bill of Exceptions until and including November 1, 1941.

119 (25) Notice of appeal of the defendant, American Medical Association filed June 2, 1941.

(26) Notice of appeal of the defendant, The Medical Society of the District of Columbia, filed June 2, 1941.

(27) Minute entries showing the filing of the notices of appeal on June 2, 1941.

(28) Bill of Exceptions of defendants.

(29) Assignment of Errors of defendants.

(30) This Designation of Record.

(31) Clerk's Certificate to the Transcript.

* * * * * * *

120 The foregoing Designation of Record is satisfactory to the United States and is hereby consented to. E. Compton Timberlake, Of Counsel for the United States.

The foregoing Designation of Record is approved and the Clerk is directed to proceed with its preparation.

James M. Proctor, Justice.

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121 [Stamp:] Filed Oct. 20, 1941. Charles E. Stewart, Clerk.

Designation of Record

Now comes, The Medical Society of the District of Columbia, a corporation, defendant (appellant) in the above

entitled cause, by its attorneys and designates the parts of the record which it desires to have included in the transcript, said parts being considered sufficient for the questions raised on appeal, namely:

(1) The indictment filed December 20, 1938.

(2) Demurrer of defendants to the indictment, filed March 29, 1939.

(3) Minute entry of judgment entered July 26, 1939, sustaining the demurrer of the defendants and dismissing the indictment.

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(6) Arraignment of June 14, 1940.

(7) Pleas of not guilty of all of the defendants of June 14, 1940.

(8) Minute entries showing impaneling of jury of February 5, 1941.

(9) Minute entries showing trial by jury beginning February 5, 1941 and concluding April 4, 1941.

(10) Motion to expunge portions of the indictment and to exclude certain evidence, filed February 5, 1941. Minute entry on said motion.

122 (11) Motion of defendants for a directed verdict filed March 6, 1941. Minute entry on said motions.

(12) Verdict of the jury by direction of the court entered March 10, 1941, finding certain defendants not guilty.

(13) Motion to strike (background), and motion to strike (hospitals) filed March 31, 1941.

(14) Motions of defendants for a directed verdict filed March 21, 1941. Minute entry on said motions.

(15) Verdict of jury of April 4, 1941, finding American Medical Association and The Medical Society of the District

of Columbia "guilty", and all other defendants "not guilty".

(16) Motion of defendants to set aside verdict and for judgment, filed April 7, 1941.

(17) Motion of defendants in arrest of judgment, filed April 7, 1941.

(18) Motion of defendants for a new trial, filed April 7, 1941.

(19) Stipulation of counsel filed April 10, 1941. Order of April 10, 1941, setting May 2, 1941, as the date for the argument and submission of defendants' motion to set aside the verdict and for judgment, motion in arrest of judgment, and motion for a new trial.

(20) Minute entry of order of May 2, 1941, showing defendants' motion to set aside the verdict and for judgment, motion in arrest of judgment, and motion for new trial argued and submitted to the court on said date.

(21) Minute entry (and memorandum of court) denying motions of defendants to set aside verdict and for judgment, in arrest of judgment and for a new trial, entered May 29, 1941.

(22) Order, judgment, fine and minute entry of the final judgment on the verdict of May 29, 1941.

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(26) Notice of appeal of the defendant, The Medical Society of the District of Columbia, filed June 2, 1941.

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(28) Bill of Exceptions of defendants.

(29) Assignment of Errors of defendants.

(30) This Designation of Record.

(31) Clerk's Certificate to the Transcript.

* * * * * * *

124 The foregoing Designation of Record is satisfactory to the United States and is hereby consented.

E. Compton Timberlake, Of Counsel for the United States.

The foregoing Designation of Record is approved and the Clerk is directed to proceed with its preparation.

James M. Proctor, Justice.

Bill of Exceptions of defendants filed October 31, 1941.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

CRIMINAL NUMBER 63221

UNITED STATES OF AMERICA, Plaintiff,

vs.

AMERICAN MEDICAL ASSOCIATION, a corporation, and THE MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA, a corporation, et al., Defendants

Bill of Exceptions

Be It Remembered, that at the trial of the above-entitled cause before Associate Justice James M. Proctor and a jury, duly impanelled and sworn to try the issues herein, which trial began in Criminal Division No. 2 on February 5, 1941, and thereafter was further proceeded with and the following proceedings occurred:

Appearances:

On behalf of the United States: John Henry Lewin, Special Assistant to the Attorney General, Grant W. Kelleher, Special Assistant to the Attorney General, George B. Haddock, Special Attorney, Department of Justice, Edward J. Hickey, Jr., Special Attorney, Department of Justice, Walton Allen, Special Attorney, Department of Justice, E. Compton Timberlake, Special Attorney, Department of Justice.

On behalf of all defendants, except Prentiss Willson: Edward M. Burke, William E. Leahy, Seth W. Richardson, Charles S. Baker, Warren E. Magee.

On behalf of defendant Prentiss Willson: John E. Laskey.

Thereupon the defendants filed and submitted a motion to expunge portions of the indictment and to exclude certain evidence and moved the Court that the following portions of the indictment be expunged and stricken and be excluded from the jury and to exclude evidence concerning said portions of the indictment:

1. Paragraph 11. All of paragraph 11.
2. Paragraph 12. All of paragraph 12.

3. Paragraph 13. All of paragraph 13.
4. Paragraph 14. All of paragraph 14.
5. Paragraph 15. All of paragraph 15.
6. Paragraph 17. All of the last sentence of paragraph 17.
7. Paragraph 18. All of the last sentence of paragraph 18.
8. Paragraph 19. All of paragraph 19.
9. Paragraph 20. All of the 7th, 8th, 9th, 10th, 11th and 12th sentences of paragraph 20 which commence with the words "The said journal" and conclude with the words "American Medical Association".
10. All of the 4th and 5th sentences of paragraph 21, which commence with the words "These so-called 'Principles of Medical Ethics' ", and conclude with the words "component societies."
11. Paragraph 22. All of the last sentence of paragraph 22.
12. Paragraph 23. All of the last sentence of paragraph 23.
13. Paragraph 32. All of paragraph 32.

And for cause therefor defendants state:

1. The aforesaid parts of the indictment are not part of the charging part of said indictment and constitute vague, indefinite and uncertain conjectural conclusions and inferences from conclusions and should be treated as surplusage and disregarded.

2. Said parts of said indictment are inferentially stated, with material facts omitted, smack of a highly colored argumentative discourse against defendants and should be stricken as redundant, impertinent or scandalous.

3. Said parts of said indictment are passionate appeals and not clear, concise statements of essential facts, and should be stricken as prejudicial to the rights of the defendants.

And for other grounds appearing on the face of the record.

Evidence and offers of evidence concerning said parts of said indictment should be excluded as such evidence or offers of evidence will prejudice the rights of the defendants.

Matters of Law Intended to be Argued in Support of the Foregoing Motion

Among the matters of law intended to be argued in support of the foregoing motion, are:

1. The designated parts of the indictment are vague, indefinite, and uncertain. They are no parts of the charging part of the indictment and should be treated as surplusage, disregarded and expunged from the record.

2. The designated parts of the indictment are stated as conclusions and inferences from conclusions. Material facts are altogether lacking and inference, opinion and conjecture are freely indulged.

3. Every indictment should be confined to a clear and dispassionate statement of essential facts. Immaterial, irrelevant and impertinent matter usually is disregarded as surplusage. In the instant case, as the indictment will be submitted to the jury, at the conclusion of the case, such a treatment will not suffice and prejudice will result from the mere reading of the indictment.

4. Any attempt on the part of the plaintiff to offer proof in support of any of the designated parts of the indictment and a fortiori the admission of evidence will prejudice the rights of the defendants.

The Court: For the present, at least, I will deny the motion without prejudice.

Exception noted.

GOVERNMENT'S CASE IN CHIEF

Gov. Ex. 1, received in evidence and read to jury as follows:

"1. The American Medical Association[1] is, and has been since April 14, 1897, incorporated under the laws of Illinois as a corporation. The Act concerning corporations approved April 18, 1872, and all acts amendatory thereof, under which said corporation is incorporated are filed herewith. Filed herewith are true copies of the charter, constitution, by-laws and principles of medical ethics. As indicated in the copies thereof filed herewith, said charter,

[1] Hereinafter referred to as AMA.

constitution, by-laws and principles of medical ethics were in effect throughout the period from February 24, 1937, to December 20, 1938. The office of the AMA is located at Chicago, Illinois. On April 1, 1938, the AMA had 109,435 members out of a total of 169,628 doctors in the United States.

"2. The Medical Society of the District of Columbia,[2] is, as has been for many years last past, a corporation incorporated under one or more Acts of Congress. Filed herewith are true copies of the Acts of Congress relating to the incorporation of the Medical Society of the District of Columbia. Filed herewith are true copies of the constitution and by-laws of said Society in effect on December 20, 1938. Except for the changes made in said constitution and by-laws as indicated in the copies hereof filed herewith, said constitution and by-laws were in effect throughout the period from February 24, 1937, to December 20, 1938. Said Society has its office in the District of Columbia. On April 1, 1938, the District Medical Society had 825 members out of a total of 1,979 doctors in the District of Columbia.

"3. The Harris County Medical Society is, and has been for several years last past, an unincorporated association of physicians and surgeons and has its office in Houston, Harris County, Texas.

"4. The Washington Academy of Surgery is, and has been for several years last past, an unincorporated association of surgeons in the District of Columbia. The officers of the Washington Academy of Surgery during the period February 24, 1937, to April 23, 1937, were Dr. Charles S. White, President; Dr. J. P. Shearer, Vice President; and Dr. W. Warren Sager, Secretary and Treasurer. The Officers of the Washington Academy of Surgery during the period April 23, 1937, to April 8, 1938, were Dr. John A. Cahill, President; Dr. Daniel Borden, Vice President; and Dr. F. C. Fishback, Secretary and Treasurer. The officers of the Washington Academy of Surgery during the period April 8, 1938, to December 20, 1938, were Dr. Daniel L. Borden, President; Dr. Fred Sanderson, Vice President; and Dr. J. Ogle Warfield, Jr., Secretary and Treasurer. The members of the Advisory Committee on Hospital Privileges of the Washington Academy of Surgery during the period

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[2] Hereinafter referred to as District Medical Society.

April 23, 1937, to April 8, 1938, were Dr. John H. Lyons, Chairman; Dr. Daniel Borden; Dr. Fred Sanderson; and Dr. A. L. Riddick. It is the best recollection of Dr. Crenshaw D. Briggs, Secretary of the Washington Academy of Surgery, and said Dr. Crenshaw D. Briggs would so testify if called, that the members of the Advisory Committee on Hospital Privileges during the period April 8, 1938, to December 20, 1938, were Dr. Fred Sanderson, Chairman; Dr. Alec Horwitz; Dr. F. X. McGovern; Dr. Paul Putzski; Dr. A. L. Riddick; and Dr. J. P. Shearer. Proof of additional members on said committee may be offered by either party and received in evidence.

"5. Each of the following corporations and associations was engaged in operating a hospital throughout the period from February 24, 1937, to December 20, 1938: Central Dispensary and Emergency Hospital; Children's Hospital of the District of Columbia; Columbia Hospital for Women; Eastern Dispensary and Casualty Hospital; Episcopal Eye, Ear and Throat Hospital; Garfield Memorial Hospital; Georgetown University Hospital; George Washington University Hospital; National Homeopathic Hospital of the District of Columbia; Providence Hospital; Sibley Memorial Hospital; and Washington Sanitarium and Hospital. These hospitals are located in Washington, D. C., except that the Washington Sanitarium and Hospital is located in Takoma Park, Maryland. All of said hospitals claim to be incorporated not for profit.

"6. Membership in the AMA is ordinarily obtainable only through affiliated state or territorial medical associations. State or territorial medical associations are known as 'Constituent' societies of the AMA.' Membership in most constituent associations or societies is ordinarily obtainable only through membership in affiliated county or local medical societies, which are known as 'component' societies of those constituent associations and of the AMA. The District Medical Society has no component societies. The Harris County Medical Association is a component medical society of the AMA. Members of affiliated component or constituent medical societies are, ipso facto, members of the AMA.

"7. Membership in the AMA was held by all individual defendants throughout the period from February 24, 1937,

to December 20, 1938. Throughout said period Dr. Morris Fishbein was Editor of the Journal of the AMA; Dr. Olin West was Secretary and General Manager of the AMA; Dr. William Creighton Woodward was Director of the Bureau of Legal Medicine and Legislation of the AMA; Dr. William Dick Cutter was Secretary of the Council on Medical Education and Hospitals of the AMA; Dr. Roscoe Genung Leland was Director of the Bureau of Medical Economies of the AMA. Said individuals during said period were full-time employees of the AMA.

"8. Each of the individual defendants, except the defendants Dr. Morris Fishbein, Dr. Olin West, Dr. William Dick Cutter and Dr. Roscoe Genung Leland, was a member of the District Medical Society throughout the period from February 24, 1937, to December 20, 1938. Dr. William C. Woodward was an honorary member of The District Medical Society throughout said period.

"9. Between February 24, 1937, and July 1, 1937, the following named persons were all of the members of the Executive Committee of the District Medical Society: Dr. William Mercer Sprigg, Dr. Henry C. Macatee, Dr. J. Lawn Thompson, Dr. R. Arthur Hooe, Dr. C. N. Chipman, Dr. Daniel L. Borden, Dr. Earl R. Templeton, Dr. William P. Herbst, Jr., Dr. J. B. Connolly, Dr. David Davis, Dr. Herbert Schoenfeld, Dr. Charles B. Campbell, Dr. Wallace M. Yater, Dr. Coursen B. Conklin, Dr. Joseph L. Horgan, Dr. Oscar B. Hunter, Dr. Thomas E. Neill, Dr. A. B. Bennett, Dr. William T. Gill, Jr., Dr. Augustus C. Gray, Dr. Sterling Ruffin, Dr. Francis X. McGovern, and Dr. Raymond T. Holden, Jr.

"10. Between July 1, 1937, and July 1, 1938, the following named persons were all of the members of the Executive Committee of The Medical Society of the District of Columbia: Dr. A. B. Bennett, Dr. William T. Gill, Jr., Dr. Augustus C. Gray, Dr. Raymond T. Holden, Jr., Dr. Francis X. McGovern, Dr. Sterling C. Ruffin, Dr. Daniel L. Borden, Dr. Henry R. Schreiber, Dr. William Mercer Sprigg, Dr. Thomas E. Neill, Dr. Henry C. Macatee, Dr. Edward Hiram Reede, Dr. R. Arthur Hooe, Dr. C. N. Chipman, Dr. John A. Reed, Dr. S. A. Alexander, Dr. John F. Preston, Dr. Harry A. Fowler, Dr. R. Lomax Wells, Dr. Earle G. Breeding, Dr. John P. H. Murphy, Dr. Harry Lee Claude, Dr. Wallace M. Yater, and Dr. Coursen B. Conklin.

"11. Between July 1, 1938, and December 20, 1938, the following named persons were all of the members of the Executive Committee of the District Medical Society: Dr. Francis X. McGovern, Dr. Thomas E. Neill, Dr. Don R. Johnson, Dr. Raymond T. Holden, Jr., Dr. William J. Mallory, Dr. John Hugh Lyons, Dr. Henry C. Macatee. Mr. Theodore Wiprud was secretary of said Executive Committee during said period. The by-laws and constitution of the District Medical Society define the duties of the Executive Committee.

"12. Between February 24, 1937, and July 1, 1937, the following named persons were all of the officers of the District Medical Society: Dr. William Mercer Sprigg, President; Dr. William P. Herbst, Jr., Vice President; Dr. Morris I. Bierman, Second Vice President; Dr. Coursen B. Conklin, Secretary-Treasurer.

"13. Between July 1, 1937, and July 1, 1938, the following named persons were all of the officers of the District Medical Society: Dr. Thomas E. Neill, President; Dr. Daniel B. Moffett, First Vice President; Dr. Jacob Kotz, Second Vice President; Dr. Coursen B. Conklin, Secretary-Treasurer.

"14. Between July 1, 1938, and December 20, 1938, the following named persons were the officers of the District Medical Society: Dr. William J. Mallory, President; Dr. John Hugh Lyons, First Vice President; Dr. William T. Gill, Jr., First Vice President; Dr. David Davis, Second Vice President. Dr. Coursen B. Conklin was Secretary-Treasurer from July 1, 1938, to November 2, 1938. Mr. Theodore Wiprud was Secretary-Treasurer from November 2, 1938, to December 20, 1938.

"15. Between February 24, 1937, and July 1, 1938, the District Medical Society had a committee known as the 'Hospital Committee.'

"16. Between February 24, 1937, and July 1, 1937, the following named persons were all of the members of said Hospital Committee: Dr. E. W. Titus, Dr. Francis X. McGovern, Dr. Ralph LeComte, Dr. John A. Reed, Dr. George R. Huffman, Dr. Fred R. Sanderson, Dr. Paul S. Putzki, Dr. Gregg C. Birdsall, Dr. Frank Leach, Dr. William H. Jenkins and Dr. J. G. Lewis.

"17. Between July 1, 1937, and July 1, 1938, the following named persons were members of said Hospital Committee: Dr. J. Ogle Warfield, Jr., Chairman, Dr. Leon A. Martel, Dr. William H. Jenkins, Dr. Gregg Custis Birdsall, Dr. J. G. Lewis, Dr. William B. Marbury, Dr. Jerome F. Crowley, Dr. Edward P. McLarney, Dr. Joseph P. Shearer, Dr. Warren Sager and Dr. John H. Trinder. Proof of additional members on said committee during said period may be offered by either party and received in evidence.

"18. Between July 1, 1938, and December 20, 1938, there was no Hospital Committee.

"19. The following defendants were members of the regular and attending staffs of the Washington hospitals indicated after each name:

"Dr. Coursen Baxter Conklin, Children's Hospital of the District of Columbia; Eastern Dispensary and Casualty Hospital; George Washington University Hospital.

"Dr. James Bayard Gregg Custis, National Homeopathic Hospital of the District of Columbia.

"Dr. Robert Arthur Hooe, Central Dispensary and Emergency Hospital.

"Dr. Thomas Ernest Mattingly, Sibley Memorial Hospital.

"Dr. Leon Alphonse Martel, Georgetown University Hospital.

"Dr. Francis Xavier McGovern, Garfield Memorial Hospital.

"Dr. Thomas Edwin Neill, Episcopal Eye, Ear and Throat Hospital and Garfield Memorial Hospital.

"Dr. William Mercer Sprigg, Columbia Hospital for Women.

"Dr. William Joseph Stanton, Georgetown University Hospital.

"Dr. John Ogle Warfield, Jr., Children's Hospital of the District of Columbia and Garfield Memorial Hospital.

"Dr. Prentiss Willson, Columbia Hospital for Women.

"Dr. Wallace Mason Yater, Georgetown University Hospital.

"Dr. Joseph Rogers Young, Eastern Dispensary and Casualty Hospital.

"20. Group Health Association, Inc.,[3] is, and has been since February 24, 1937, a corporation incorporated under the laws of Congress for the District of Columbia. Filed herewith is a true copy of the original certificate of incorporation of said corporation and amendments thereto. Filed herewith is a true copy of the original by-laws of said corporation as adopted on March 22, 1937, and the amendments thereto during the period from March 22, 1937, to December 20, 1938.

"The foregoing contents of this stipulation and the stipulation itself are not to be considered as evidence offered on behalf of any of the parties hereto, unless and until the same, or any part thereof, is offered in evidence by any party hereto and then only as evidence on behalf of the party offering same. Upon the offer by any party of any part or all of this stipulation in evidence, said stipulation, or any part thereof, will be subject to the objection by any other party hereto that the facts hereby stipulated, or any of said facts, are incompetent, irrelevant, and immaterial on the issues formed in this case. No objection will be made that the stipulation is not competent evidence upon the facts stated in the stipulation, but objection may be made that the facts stated in the stipulation are not competent on the issues. By this stipulation the parties hereto do not intend to stipulate that they, or any of them, had knowledge of the facts herein stated at the time they occurred.

"It is further understood and agreed that the specifications of times herein do not preclude proof by any party of the facts covered by this stipulation at times other than those specified herein, nor preclude proof by any party that said facts were represented or believed to be otherwise."

The documents filed with this stipulation were not read at this time.

DR. HUGH CABOT, a witness for the United States.

Direct examination.

By Mr. Lewin:

I am a surgeon. I graduated from the Harvard Medical School in 1898 and served a year to fourteen months in the

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[3] Hereinafter referred to as Group Health.

Massachusetts General Hospital as an intern and was licensed to practice in 1899. I have been a practicing surgeon for over forty years. I took my preliminary education at the Roxbury Medical School, Harvard University, as an undergraduate and then was four years in the Medical School, from which I received my doctor's degree. I received an honorary degree of LL.B. at Queens University, Belfast, Ireland, in 1925. After completing my internship at the Massachusetts General Hospital, which is a large hospital, I went immediately into practice as an assistant of my cousin, the late Arthur T. Cabot, and then was appointed an instructor in operative surgery at the Harvard Medical School. In 1904 I was appointed surgeon to out patients of the Massachusetts Hospital and subsequently became assistant surgeon and finally full surgeon. I left Boston in 1919. I was an instructor from 1902 until 1910 in the Harvard Medical School; in 1911 I was appointed as an assistant professor, and in 1918 as a clinical professor. While an instructor in Harvard I practiced privately, as my time in the hospital was only part time, generally in the morning; I was also surgeon to a small hospital, the Baptist Hospital, which grew to reasonable size while I was there from 1901 to 1919. I went overseas and joined the British Medical Service in 1916 and served with them throughout the war. I am listed in Who's Who in America. I was decorated with the Order of St. Michael and St. George. I returned to Boston for a few months in 1919, and in September went to the University of Michigan as Professor of Surgery, a full-time appointment. In 1921 I became Dean of the Medical School of the University of Michigan, one of the larger medical schools of the country. As Dean I was occupied not only with surgery but with school administration and students' educational requirements. The University in an average year enrolls between 500 and 600 students, although there have been as many as 700. I left the University of Michigan in 1930 and went to the Mayo Clinic in Minnesota, operated by the famous Mayo Brothers, as one of the consulting surgeons, which meant that I was called in consultation by the physicians in most of the general fields of surgery, though most of my operative work was in genito-urinary surgery, now called urology. In other words, I was a consultant in general surgery, but, when I operated, it was in the field of genito-urinary surgery.

The Mayo Clinic was the first private organization which brought together in a very small town, Rochester, a group of physicians, surgeons and specialists. The conception of a group, formal group, probably began about 1887. The clinic and its original conception brought together a group in its own quarters, consolidated to save wasted motion of one physician getting in contact with another, and it was built into a complete organization such as one often associates with a hospital organization. The group of physicians at the clinic, however, never did own or operate hospitals, as the Mayo Clinic never thought it was wise to involve itself in the operation, the business operation of a hospital, though the hospital and the clinic were very closely associated. As the organization became larger, physicians engaged in various fields were brought in from other parts of the country, and, to some extent, from other countries. An important development in the clinic was the establishment of a fellowship group under funds saved by the clinic under which an increasing number of young physicians in all fields, who must have had not only a medical education but some hospital experience before coming to the clinic, remaining for a period of three or more years on a meager salary to obtain advanced degrees, generally master's degrees in some of the fields of medicine or surgery or the specialties. Some of these young physicians remained there five, six or more years and from that group in later years many of the members of the staff were selected. This practice has the effect of bringing there a very able and carefully selected group of youngsters. The Mayo Clinic enjoys an international reputation and there is no medical institution better known in the world today. Physicians connected therewith enjoy good reputations. While at the clinic I was compensated on a salary and that was true of my colleagues, except the group of partners. I was compensated by a salary while Dean of the Michigan Medical School and while professor of medicine at the Harvard Medical School. In discussing the advantages of gathering together doctors on a salary basis, it is important to remember that the grouping together of physicians for the purpose of effective practice goes back a great many years, having its early beginnings in the great hospitals in Europe where the general men and the special men were gathered together in the hospital for the purpose of effective treatment. The Mayo Clinic was the first group which you might call a

"private practice group," as the physicians and surgeons in the hospitals were not in private practice, at least in the early days. The Mayo Clinic was the first eminently successful attempt to bring together in a private institution a group which would cover all of the fields of medicine, surgery, and the specialties, and have there incorporated the necessary laboratories which are essential to the conduct of the great hospital organizations. The advantage at the Mayo Clinic or any of the clinics is the same as at the great hospitals, that you have a very close relation with all your colleagues; in normal private practice, it may be quite difficult to get hold of your colleagues, but in the hospital, and more so in the clinic, the physicians, surgeons and specialists have easy access to each other under one roof, and access to men in the laboratory field, the bacteriologists, the chemists, with a very great saving in effort and with enormous educational value. In the hospitals and even more so in the clinic, by constant contact, all can keep more or less abreast of the times.

Q. Dr. Cabot, what have you to say about this, the statement that this expedient of practicing in a group was a new idea of social philosophy which sprang up in 1933?

A. Oh, that is the time—the interpretation. The grouping for the purpose of more effective practice goes back for a great many years in the hospitals, and the Mayo Clinic, then the developments which took place as a result of the successful operation of that organization. A grouping could not be said to have begun at all recently. It is more or less steady development tending to fit in with the development, economic, financial, and particularly the development of medicine in its increasing complications.

I have been interested in and studied group practice, having actually visited the various samples of group practice, studied their publications, organization, not only in this country but in other countries; though nothing precisely corresponding with group practice, I think we understand, is at all common in this country outside of the hospital. In the field of medical economics, I have written two books, "The Doctor's Bill" (1936) and "The Patient's Dilemma" (1940). I have written on scientific subjects in the field of surgery and genito-urinary surgery for many years; I edited a two-volume work on neurology, known as

"Modern Neurology" and contributed some 150 papers to medical journals. At the present time I am working with a group of surgeons arranging for the medical service of a corporation known as "Health Service, Incorporated," on a prepayment basis, the corporation arranged with a partnership of five physicians to plan for and arrange for medical care to their subscribers, and I am the Medical Director of that partnership. This group was started in Boston by a group of people, none of whom were physicians but who were impressed by the fact that there was a considerable number of people in the community who, if they could obtain their medical care on a fixed prepayment basis, should be able, if the plans were worked out satisfactorily, to obtain their care within their rather modest incomes. I formed a partnership with four physicians who represented medicine, obstetrics, surgery and diseases of children to furnish medical care to the subscribers. They undertook to arrange for a planned medical care and to associate with themselves other physicians. I think perhaps the most striking thing about that organization was that from the start we tried very hard to get this thing to work with the least possible disturbance of the normal arrangements of private practice; what I refer to is the associated physicians, of which there is a considerable group, to carry on their private practice and to see the subscribers of Health Service, Incorporated, as they see their other patients. It was our notion that if a sufficiently large group of physicians was included, in this way they would be able to do this work without disturbing their normal relations and thus fit into the present though probably changing pattern of medical practice. The professional group of partners received no compensation for administrative work but were compensated for consultant work just as other physicians. A contract exists between the medical group and the corporation. The group is limited by agreement, to subscribers whose family incomes do not exceed $2,500. There is no other limitation. The great thing is complete medical care, including special care when that is necessary, but not including hospital care, which could be obtained in any other way. Physical examinations are required of individuals but not groups for the purpose of getting a reasonable cross-section of the community and to prevent an overloading of people already ill, or old.

I have been a member of the Massachusetts Medical Society since 1909; that gave me membership automatically in the AMA; a member of the Michigan State Society while in the State of Michigan (11 years); a member of the Minnesota State Medical Society while in Minnesota (9 years); I have had membership in the American Surgical Association, the American Association of Genito-Urinary Surgeons, the American Neurological Association, the American College of Surgeons, the International Association of Urologists in Great Britain and France, and the French, Spanish, Italian and Romanian Neurological Associations.

In the Nineties there was relatively little specialization in medical practice, most physicians were general practitioners, and even specialists such as surgeons still continued to do general practice, though specialization had been going on for a number of years, to some extent, of the nose, throat and ear. Specialization of diseases of the skin were beginning and specialization in the diseases of children began just before the Nineties, but, as a whole, most physicians in that period were general practitioners. Diagnosis was largely a matter of careful physical examination and use of the five senses as specialized instruments were very few. The use of laboratories in the fundamental sciences, chemistry, bacteriology and pathology was much less than it is today. In the late Nineties the use of bacteriology in diagnosis was much less and the character of the bacteria was unknown. The whole body of knowledge in medicine was very much less, and by devoting a reasonable time a physician could grasp the whole field of medical practice. Equipment was much simpler than it is today; the number of drugs was smaller, though the physician had his thermometer and his stethoscope, as well as obstetrical equipment and some surgical instruments; the X-ray was in the experimental stage; medical knowledge was very much less extensive than it is today. Accurate diagnosis, such as one expects today, was not possible at that time, as they depended upon the experience of the physician. Much less was known about the causes of diseases; operations were fewer and done only in the most serious cases, as the risks were higher, and this situation applied to operations of the brain, as well as the body. In the last few decades enormous advances have been made in the fundamental sciences applicable to medicine; electricity has made possible many advances; extensive advances in bacteriology have been made; vaccinations have

come from this development; various blood tests have been developed; pathology has been improved and extended; pharmacology has advanced; physiology has advanced and been revolutionized, and it is probably true that the advances in the last forty years have, in their net value, been almost equal to the bulk of previous knowledge. This mass of knowledge today is entirely beyond the grasp of any one person, while possibly within the grasp of the physician half a century ago. Increasingly it has become impossible for any one physician, particularly if he is engaged in reasonably active practice, to have even a bowing acquaintance with many of the special developments of real importance to the patient. Specialization is very great and is steadily increasing. Forty or fifty years ago the general consulting physician and the general consulting surgeon fairly well covered their fields, but now specialties have made that impossible, so that the general surgeon or general physician today requires constant advice from his more specialized brethren. Specialties began to develop about fifty years ago. Until about twenty years ago most specialists had been in general practice. It is very common practice today for a person to at once go into a specialty without going into general practice. The chief cause for the increase in specialization is the increase in essential knowledge.

Today medical educational requirements are much higher; not only have the medical schools increased their requirements, but also most states require one or two years' work in a hospital. During the first hospital year they are known as interns and in the second year as residents. The graduate doctor of today must have access to all methods of modern diagnosis which were not possible in the earlier days, thus necessitating a modern laboratory and a vast amount of equipment. The important points in the grouping together of doctors and physicians are that you can consolidate office space and save enormously on equipment; time and expense can be saved by the use of a common laboratory and common technicians; a well organized clinic can have their laboratory work done more promptly, more efficiently and more cheaply. A clinic, in order to render complete medical care if they did not use a hospital laboratory, would have to have laboratories of pathology, bacteriology and medical chemistry available.

The modern hospital is run by a Board of Trustees who are laymen. The Board may be elective or appointive. The

Governing Board as a rule is a lay board sometimes with one or two physicians to advise it on details. The hospital may have an administrator, known as a hospital superintendent to carry on the business side of the hospital. The appointments to the medical staff are ordinarily made by the Governing Board. The staff of doctors directs the purely medical affairs of a modern hospital. Usually the medical staff is divided into a medical staff and a surgical staff. In large organizations these staffs will be subdivided into specialties. This staff is known as the regular or attending staff. A relatively modern development in the hospital system is the courtesy staff, who have no duties in the care of hospital patients but who bring their own patients to the hospital for treatment. The courtesy staff is elected by the Board of Trustees. In practice the members of the courtesy staff are selected by the regular staff and recommended to the trustees, who would hardly concern themselves with matters with which they could have little knowledge. It is not a difficult thing for the ordinary graduate physician who has completed his internship to get courtesy staff privileges at hospitals, but yet the extraordinary situation prevails the country over by which a physician licensed to practice can still be excluded from hospitals. That is an unfortunate condition because it is impossible for a physician to give the best medical care if he cannot get his patients to a hospital. He can, of course, send them to a hospital with a break between him and the patient; the patient goes to the care of somebody else. It is a very anomalous situation by which many physicians licensed by the state, authorized by the law to practice medicine and surgery, can still be excluded from the use of a hospital without which their practice is not as good as it could be. It is very serious, I think. I see no avoiding the conclusion that every physician licensed by the state must be assumed to have the capacity requisite in a physician, and that he ought, therefore, to be potentially a proper person to have on the staff of any hospital. It must always be true that there are second rate and incompetent people in the medical profession, just as there are in any other field. But I think they should be selected by the hospital staff by a method of trial and not excluded for any reason whatever. To undertake to say that a given physician is not a competent person to be admitted to a hospital for the care of patients seems to me to run counter to the fact

that the state has given him a license to practice medicine. Then another organization, not a state organization, undertakes to say that he may not do so in the most efficient way. I think the selection, and the exclusion of the incompetents, should be made by admission to the hospital staff, then bringing them along, under the supervision and advice of their elders, and, with the possibility that they are incompetent or dishonest, of excluding them. I do not like the notion that there can be physicians licensed by the state who are forbidden to practice medicine in the proper way.

Q. Are there any other standards that ought to operate to exclude him?

A. Oh, I think so. I think that many physicians applying for a hospital will be people of limited ability; that they should be admitted to the staff only to do the more simple things. Take the surgical staff, for instance. They should at the beginning be allowed to do only the more simple and safe operations. As they go on demonstrating their capacity under the supervision of the senior staff they should be allowed to do more and more. For some of them there would obviously be a limit beyond which they ought not to be allowed to go; they are not of the caliber that can take on the difficulties and responsibilities and the tragedies of major operative specialties, for instance. They are not built that way. But they ought to be allowed in the hospital to do those things for which they have demonstrated a capacity.

Q. Those standards you have described go to the professional ability of the man?

A. Yes.

Q. What ethical requirements or standards should there be, in your opinion?

A. I suppose, the ethical requirements of the general population. You don't want a crook around the hospital any more than you would want him anywhere else. A person who cannot live up to the ethical standards of society is no person to have around a hospital.

Q. Are you defining ethics in answer to that question, doctor?

A. As rules for the conduct of life, sir.

Q. Does it have a moral significance?

A. Oh, very clearly.

Q. Does it embrace economic views or practices?

A. Oh, I don't see how it could. I may believe in free silver, but I don't think that that makes me necessarily a good surgeon.

Q. Or necessarily not a good surgeon?

A. No.

There has been a great increase in the use of hospitals in the last four decades. Formerly the patient's house was turned into a temporary hospital. Medical and surgical work is better done at a hospital and the necessary equipment is at hand. The cost of adequate medical care has thus increased enormously. The patient is getting enormously better medical care today but inevitably much more expensive, as the cost has risen with the improvement. Typical examples of increased costs are the higher hospital charges, special nursing, expensive medications, use of oxygen, use of the X-ray, increased overhead expenses of the physician which cause him to collect from his patients enough to pay him a reasonable income, and the increased number of consultations. Consultations today are and should be very much more numerous than they were. The consultant having special knowledge and seeing a great deal fewer patients must have more for the consultation than the physician who sees the patient in his office; and therefore, the charge for consultants, if they are used to the full extent that it is to the interest of the patient to use them, enters very largely in the bill.

I believe that these increased costs have made it very difficult for a family with an income of less than $3,500 a year to obtain and pay for adequate medical care today on the fee-for-service basis, that is, a basis where each physician who gives advice charges his own fee. People with an income of $3,500, in my judgment, have three choices in meeting the expenses of medical care which he cannot pay; he may do what a great many people certainly do, ask for and obtain less medical care than he feels would be desirable and is in fact desirable; or, he may more or less throw himself on the mercy of his community and accept charity; or, adequate medical care can be provided on a prepayment basis, whereby a considerable group of people band together, make a regular payment and then engage the services of a group of physicians for whom this group of consumers can supply a definite income. If the group is of sufficient size, the thing will provide entirely adequate and very good treatment, though that could not be delivered by

a smaller group. This practice has the outlines of an insurance feature, though it is not technically insurance as such.

I am familiar with various prepayment plans, such as the Ross-Loos Clinic, through observation and study. The Ross-Loos Clinic began in a small way; took only people who represented a percentage of an employed group. Dependents of subscribers may be brought in at reduced rates. The plan from the start included hospital care. Patients were sent to hospital and expenses defrayed by Clinic, but the hospital remained a local, private institution. Very early they built themselves a clinical building.

Prepayment feature has not sprung up as a development in social philosophy only since 1933. The theory of prepayment goes back into the days of the British Friendly Societies and has been going on for more than a century. It was evolved in cases of large practice, and the principle and theory is present in the various forms of contracts for medical care in this country and elsewhere, and, on the whole, which did a pretty poor job.

In my opinion the Ross-Loos Clinic has been successful. As to professional reputation, the physicians in the neighborhood are inclined to be critical, while those who came from a distance, stay and observe their work, are inclined to the view that it is very successful. I think that the care given is, on the whole, something better than good care. I think that you can rely upon the growth of the organization as evidence that they must have been providing a pretty satisfactory article or they would have failed to grow as they have. They are approaching a point now in their growth where they would be well advised to take no more patients, because there is a size to which any organization can grow where they might get themselves into administrative difficulty which would be very serious. In my opinion, there couldn't possibly be an ethical objection to a doctor who accepted a salary from such a group; 90% of the civilized world is on salary; I was on a salary for twenty years, ethics have nothing to do with the salary. I have had some experience with the Trinity Hospital group of Little Rock, Arkansas, and in my opinion that group is extending very good service to those it treats. For some time it has been rendering satisfactory service. It involves group practice and prepayment, with salaried doctors. I am acquainted with the Stanacola plan of the Standard Oil Company in Louisiana. I am not sure what part the Standard Oil Com-

pany played in organizing the group. The Standard Oil Company, and many other great corporations, have a medical organization for their whole organization. I am not sure that some of the officials of that company didn't suggest the plan; here was the solution of a problem which the companies did not want to undertake. The company, I think, assisted them more or less with the payment of rent and the furnishing of quarters and things like that. A good many companies believe that the really complete and satisfactory care of their employees is to their own interest. Some companies have provided that care without any charge to such employees. Preventative medicine undertakes to prevent the occurrence of diseases, and it is one of the features of the prepayment plan, which I think is of most importance and an asset. It is an asset because a worried employee is not an effective worker. A group has been going on for many years in the Endicott-Johnson Company in Binghamton, New York. The company pays for and offers to their employees complete medical service as a good piece of business. A producer group is an organization set up primarily by physicians, like the Ross-Loos group, in which physicians group themselves together and offer to the community medical care on the prepayment basis. The consumer group is one in which the initiative comes from the patient and is a quasi-cooperative arrangement in which a number of individuals form an organization and then proceed to enter into an agreement of some kind with a group of physicians to provide medical care. In the middle is the industrial establishment for the care of employees and sometimes their dependents.

There is no reason, in my opinion, for rejecting a doctor's application to a courtesy staff of a hospital because he is identified with a prepayment plan, such a rejection would be improper. It is essential that patients of these groups be admitted to hospitals, as no group can properly offer medical care which cannot assure hospital care. Group hospitalization plans are somewhat similar and somewhat different from medical groups; group hospitalization plans provide an insurance feature or feature like insurance for hospital care only, and has nothing to do with medical care, though it is possible for a medical group to include in its scheme a group hospitalization plan, as Ross-Loos has done it. I am somewhat familiar with the medical services rendered by the Southern Pacific Railroad, which is a group

practice set up by a large corporation for the benefit of its employees. These plans are common, more so in the West and Middle West than in the East. This type of practice is not "herd practice."

The advantages to the patient of prepayment group practice seem to be very clear and important; all with moderate incomes constantly dread severe accident or illness as likely to undermine our economic security: here is a method by which that can be determined, under which they can be sure of getting complete care, depending for success only on the individual's ability to select a proper group and in that connection the patient is confronted with the same problem in making his decision or choice of groups as he meets in the selection of a doctor. Among groups as well as private individual doctors there are those which are poorly conducted. Group practice brings within the patient's reach articles of medicine and medical care which a patient does not ordinarily get from a private practitioner, such as preventive medicine. Under group prepayment practice he gets preventive medicine as a certainty together with his care for diseases, accidents, etc., as they turn up. During childhood and after middle age competent medical supervision is very important, yet under a system of private practice we are inclined to neglect this care. From the point of view of the physician, the advantages are various; they have ready access to their colleagues; there is no loss of time; they are at liberty to ask for consultations which they might hesitate to ask under normal conditions because of the expense to the patient; they are at liberty to turn a patient over for particular treatment to one of their colleagues, all without loss of time, and the question of cost to the patient is eliminated. The physician has the opportunity to keep abreast of specialized fields by access to and discussion with colleagues. The physician will have a fixed income. Younger men may be employed just as in hospitals. They are able to exercise their energies and their talents, because of this fact, successfully in the group practice. They are supervised by more experienced physicians, just as in hospitals, and progress as they show ability. There are qualified doctors to man group practice.

Q. Would the quality of medical care given by these groups be inferior to the average care gotten on a fee-for-service basis?

A. I don't see how you can possibly generalize and say that every organized group would give care superior to the ordinary care, or that the reverse would be true. As I have said, some groups, like individual physicians, dispense an unsatisfactory article and that is no different from the situation which has always existed, in the case of physicians. On the whole, it would probably be easier to choose a capable group than it is to choose physicians and then pass on to a variety of specialists.

Q. So it depends on the individual physician and not on the type of practice in which he is engaged?

A. I think in a group you stand a better chance of getting a good article.

I have been able to give a better quality of medical care while on a salary than when in private practice, as I was better able to tell the patient the truth and had more access to consultants. From my own experience I am led inevitably to the conclusion that I can give better service in a group than I can as an individual practitioner, even with hospital privileges.

A doctor who engages in group practice is not thereby prevented from having that proper relationship with his patients that he should have. The relation between doctor and patient is between the doctor and the patient and doesn't depend on the type of organization. It depends on the wisdom and humanity of the physician and his proper relation to the patient. There is not necessarily any lay interference from the laymen who are handling the business side of the group. It may occur, of course, and I think that is one of the things with regard to which the medical profession ought to give its advice very freely, to be very sure that the lay management deals with the things with which it has capacity, and leaves to trained experts decisions on matters of medicine and things for which it has special knowledge and ability. The problem is the same as it is with the hospitals where you have a lay board of trustees and a medical staff. I think that it is possible that there is more reason for the lay board to interfere in this group practice than there is for it to interfere in the conduct of the affairs of the ordinary hospital. The relationship between a cooperative group and a group of physicians is a little different from the relationship of the hospital trustee who ordinarily isn't personally involved. I think there

is a little danger that the cooperative will think of medical care as it thinks of buying commodities and try to get the same article at a little lower price; there is nothing more worthless in the world, and the danger is that the layman may not recognize that point. That is a point upon which I think well advised bodies of physicians can produce a controlling influence and should do so. It would not be an example of improper interference in medical matters for the lay president of one of these groups, charged with its business affairs to write a letter to the hospitals telling the hospitals that the group would like access to these hospitals for its physicians. He is simply asking for his group the ordinary privileges which might ordinarily be obtained for them. A reasonably worded letter from the president along that line could be written in an arrogant way, but there certainly wouldn't be anything arrogant in the mere fact of writing the letter. There is nothing wrong with trying to make sound arrangements with a hospital. I am inclined to say that if hospitals could be offended by such a letter they had better get new management. Group practice on a prepayment basis would have absolutely no effect upon the confidential relationship that exists generally between patients and hospitals; as to the danger that the records in the clinic, concerning the patient, might get into unauthorized hands, it is practically the same situation that has occurred in the great hospitals for a great many years. Those records are confidential communications and cannot be at the disposal of anybody else without the permission of the patient. I am aware that some records have been improperly shown, but I am also aware that private physicians have also allowed access to those records. Group practice on a prepayment basis has no bearing on that problem; while in group practice occasionally I tried to get a record that they wouldn't give me because my name wasn't on the folder and I had to get another doctor to say I was a proper person to look at it.

The term "free choice of physicians" is ordinarily used to mean that the individual looking for medical care may take any physician whose services he thinks he desires and in regard to which capacity he has heard, on what he believes to be good evidence, that he is a good physician. It is the doctrine of reasonable choice. Group practice on a prepayment basis preserves all of the elements of freedom of choice of physicians that are worth preserving. I don't

myself believe that the average layman is well equipped to make the choice of physician where there are a considerable number of men available. A different condition may occur where there are not many physicians in the neighborhood, but it is very difficult in selecting a physician for the layman at times to make a good choice, because he has little or no knowledge of the article which he is trying to buy, and there is no satisfactory method by which he can find out its quality. He is depending on what is generally common gossip, Jones says that Brown is a great physician; that is a matter of opinion and Jones' opinion may not be a very good one, it may be that he has not seen much of him professionally; it may be that they are two personalities who get along extremely well, that Jones likes him but as a matter of fact Jones may be mistaken in believing that Brown is a good physician; I doubt myself the accuracy of freedom of choice. I think the average layman will get a better article in group service if he makes his choice in hospitals and groups.

In Boston there are three or four large hospitals between which a patient might make a choice; if an individual requires hospitalization he makes a choice from one of those hospitals and having done that he feels that he has put himself in good hands. That has always occurred in the Mayo Clinic. The patient doesn't go there to see any particular physician; they have reason to believe the Mayo Clinic provides a good article of care and when they get there they normally are assigned to a physician, more or less in rotation, according to who is busy, and always to a general physician. I think that kind of choice which the average layman has is more likely to be right than if he undertakes to seek individual physicians and then the consultant. I should like to provide a situation where freedom of choice might be an informed choice. I think they hit upon this method at a time when conditions were not what they are today and that the patient's selection under present-day conditions is becoming less and less accurate. Even if freedom of choice should be defined to be a capricious freedom of choice, still I do not think that there would be anything in group practice which would interfere with it. In most well organized groups there remains a great deal of choice. Normally a patient is referred to one of the general physicians. It is within my knowledge that patients don't always get on with the particular physician, and if he ex-

presses a desire to see someone else, he is referred to another physician in the group; he has made his choice in that group. If he desires to consult another physician outside the group he may do so, as there is no method by which you can limit him. A patient who is told by a hospital that he may not have the doctor that he wants obviously does not enjoy freedom of choice. If one of these members of a group goes to a hospital and is told that he cannot have the group doctor but must have one of the staff doctors of the hospital, that would be a limitation of freedom of choice. If the AMA takes upon itself to pass a rule that no doctor shall treat his patients in any of its approved hospitals except its own members, that rule limits and interferes with freedom of choice.

I have seen something of the workings of Group Health. I knew a little of their plans in advance, and expressed some opinions and I came down here and went over the layout with their staff; I shouldn't regard myself as having a very complete knowledge. In 1937 I had some correspondence with Mr. Zimmerman and Mr. Kirkpatrick; then I came down here and went around and saw the staff and saw them at work and had some discussion with members, I suppose of the Board of Trustees. Group Health is the consumer type of prepayment plan. That is a group in which the initiative comes from the group of patients, who undertake to arrange for a medical group which will do the work. I am not sure of the accuracy of my information; I was more interested to see whether this outfit with a clinic seemed to me to be doing a decent job than with the question of organization, which wouldn't seem to be much of my business. I came to the conclusion at that time that they were equipped to do satisfactory work and that the four or five physicians whom I actually saw at work in seeing patients were doing very well. I saw the clinic itself and inspected the equipment. The clinic seemed to be well regulated with the flow of people. I didn't find overcrowded waiting rooms and the thing seemed to be moving smoothly. I assume that it was a fair sample of an average day. They had at that time the proper space, and I might say the proper equipment to deal with that group of patients. They had laboratories and X-ray machines and things of that sort and there were doctors on the group staff making common use of those facilities.

Each properly organized group practising on the prepayment basis is certainly a method of diminishing the average cost. In a year it may not diminish the cost, but on the other hand, in another year it may be only a very small fraction of the cost which that patient or some of them would have incurred. On the average taking it over a period of years I am satisfied that that method of payment would decrease the cost of the average family to obtain good medical care. There is nothing inherent in group practice that will keep the physicians from having themselves subject to the call of their patients so that they will be available to render care to their patients at all hours. My experience with the group is that it is easier to get them after hours than it is the practising physician.

The AMA is a national organization in which membership is obtained through a state society, and membership in the state society is obtained by membership normally in a county society. Here in the District of Columbia there are of course no counties, but normally the county societies take on their members. A young physician applies for membership and unless there is some objection he is accepted. He becomes by that act a member of the state society and a member of the AMA. The AMA is very large; it includes a large majority of the physicians of the country, 110,000 or 115,000 or probably more out of something like 160,000. There is no comparable medical society either in size or activities in the United States. It is in the business of publishing a journal and there are important things which would look like business to me and there are undoubtedly a large number of employees who are not professional people and I assume that to be a business relation. They are in the publishing business as one of their very important activities. A considerable group of doctors of medicine are employed not to treat patients, but on a salary basis to carry out the policies of the AMA. The AMA does not have local societies but the state societies are described as constituent societies. Each state has such a society. The AMA has a Board of Trustees; it has a House of Delegates which is made up of members from the state societies elected from the state societies in general proportion to the number of physicians who are members of the state society in that state. The House of Delegates meets ordinarily once a year and in them ultimately resides the power which they dele-

gate to various people. The Board of Trustees is elected by the House of Delegates and has certain powers which it may exercise between the annual meetings of the Association. The House of Delegates also elects the members of various Councils which carry on a great deal of the important work of the Association. Some of these Bureaus and Councils are the Bureau of Legal Medicine, and the Bureau of Medical Economics. The term medical economics has been used for more than twenty years and embraces the economic problems which are peculiarly applicable or more than ordinarily applicable to these problems which come up in the practice of medicine. The function of the Judicial Council of the AMA is to pass on questions referred to them by their state societies.

The state society has taken action and would like to have that action refused or approved or disapproved. I don't think the Judicial Council can deal with problems of an individual except as brought through a constituent assembly. They frequently render opinions at the request of the House of Delegates on problems upon which they hold an opinion on semi-judicial questions. I do not think that the AMA has any control over who remains a member of the local medical societies in the first instance. The problem of the local medical society is to deal with its own members; then either party aggrieved may appeal that decision to the Judicial Council and the decision of the Judicial Council as to whether that man may remain a member or not is binding upon the local society.

Gov. Ex. 2 was received in evidence but not read. (This is a stipulation that certain publications of the AMA may be offered in evidence.)

Gov. Ex. 3 was received and read in evidence as follows: Excerpt from a pamphlet entitled 'Proceedings of the House of Delegates of the American Medical Association, the 89th Annual Session held at San Francisco, California, June 1938' as follows:

"The general work of the Association. The year covered in this report—that is 1938—of the Board of Trustees has been characterized by a very notable expansion in the activities of the various councils, bureaus and departments of the Association until, at times, available facilities have been seriously strained. A constantly growing interest on the part of the general membership in changing social con-

ditions; increased efficiency of medical organization in counties and states throughout the nation; a more active and intelligent interest on the part of the public in matters pertaining to public health and medical service; legislative activities in the states and in the federal government; the consideration of important questions pertaining to medical education, hospital operations and the extension of public health programs; greater financial and administrative participation on the part of the federal government in public health affairs in states and in communities; proposals for the development of medical and hospital service plans for the benefit of the members of low income groups and actual operation of such plans, and a notable increase in the number of members of the Association together with many other important factors have brought into the headquarters offices a veritable flood of inquiries and demands for information and service. An earnest effort has been made to meet such demands as fully and as helpfully as possible. (58-59-60)

Business Operations

The official Report of the Treasurer and the official Report of the Auditors are submitted to the House of Delegates as a part of this report of the Board of Trustees.

The gross earnings for the year ended December 31, 1937, amounted to $1,654,203.74 as compared with $1,547,218.23 in 1936. Operating expenses were $982,830.10 as compared with $909,417.95 in the preceding year. Association expenses including expenditures incident to the operations of councils, bureaus and departments amounted to $431,635.63 as compared with $411,028.93 in 1936, while miscellaneous expenses for the year 1937 including insurance and taxes, building expenses and depreciation, fuel, legal services, and the cost of sundry publications amounted to $218,601.19 as compared with $209,382.37 in 1936. The net income for the year was $122,242.92, of which sum $83,563.74 represented income from investments, so that the actual net operating income was $38,679.18.

While only a few of the bonds owned by the Association have defaulted in the payment of interest, there has been a rather serious depreciation in the market value of some of the securities held. The Board of Trustees, the Treasurer and the General Manager of the Association have sought

the best available advice with respect to investment of the Association's funds. In accordance with the situation that generally prevails, the average interest return on invested funds has been decreased because of the substitution of securities bearing lower interest rates than those which formerly obtained.

The payment of wages and salaries, exclusive of those involved in the operation of councils and bureaus, amounted to $460,182.01 in 1937 as against $443,693.17 in 1936. Increased labor costs in effect during the latter part of the year accounted for most of the increase in this item, and notification has already been received to the effect that these costs will be further increased during the current year. The cost of paper in 1937 was $241,663.85 as compared with $208,922.37 in the preceding year. These costs would have been considerably larger except for the fact that the fullest possible advantage was taken of the opportunity to purchase paper stock before material increases in the market price went into effect. The sum of $97,274.89 was expended for postage in 1937 as against $92,123.08 in 1936.

Fellowship dues and subscriptions paid in 1937 amounted to $670,170.31 as compared with $638,243.18 in 1936, the increase being due, principally to increased circulation of The Journal and to a rather notable increase in the number of Fellows enrolled. Total receipts from the sale of advertising space in Association publications were $841,042.57 as against $780,299.01 in 1936.

The number of employees at the time of the preparation of this report was 616.

The purchase of some new machinery and equipment, contemplated when the last annual report of the Board of Trustees was submitted to the House of Delegates, was deferred, in part for the reason that some of the machinery that must be purchased will have to be newly constructed and in part because some of the older machinery which it had been intended to discard was repaired or partially rebuilt so as to extend its usefulness. It will be necessary to install some new machinery in the printing department during the current year. Increased activities of the councils, bureaus and departments of the Association have required the purchase of a considerable amount of new office material. (58-59) (60)

In the Report of the Treasurer and in the Report of the Auditors, submitted herewith, will be found more fully itemized statements of income and expenditure.

Summary

Gross earnings and miscellaneous income were larger in 1937 than 1936, while operating and miscellaneous expenses were also considerably larger. Income from investments was slightly larger than in 1936. The net income for the year was $122,242.92, of which amount $83,563.74 represented interest on investments and $7,453.20 represented miscellaneous income.

The Association Building

The experience of the past year has fully justified the action taken by the Board of Trustees whereby the entire building was remodeled and two new stories and an assembly hall were added. Better working conditions have been afforded in all departments, and it has been possible by reason of building expansion to bring closer together councils and bureaus whose work is closely correlated and thereby to avoid unnecessary duplication of effort and to increase efficiency.

Many commendatory expressions have been received concerning the beauty of the Association's building as it now stands. The Board of Trustees would urge the members of the House of Delegates and the members and Fellows of the Association who may find opportunity to do so to visit the headquarters office to see at first hand the nature and the scope of the work that is being prosecuted there (59) (60).

The Journal of the American Medical Association

The place held by The Journal of the American Medical Association in the field of medical periodicals is now so well established that it is unnecessary to offer comment on this point. Nevertheless, the publication has not been static. It has developed a new series of articles on the relationship of the pharmacopeia and the physician. It has continued its campaigns against mortality from typhoid and from diphtheria and has reestablished the campaign against Fourth of July accidents.

The publication formerly called the Bulletin of The American Medical Association is now fully incorporated in The Journal as the Organization Section. Here special attention is given to problems of organization, to medical economics, to reports of activities of various councils, bureaus and departments, and to the work of the Woman's Auxiliary. The value of this week by week circulation of important information in the field of economics and of organization for the maintenance of interest of the individual physician cannot be overestimated. Because of the significance of this material, the Board of Trustees would recommend that it be placed in the center of The Journal, and incorporated as a regular feature on medical economics."

Gov. Ex. 4 was withdrawn by Government counsel after an agreement between Government counsel and defense counsel pursuant to which agreement Government counsel stated to the jury that the following is admitted; "Defendant American Medical Association maintains a Bureau known as the Bureau of Medical Economics which concerns itself with economic organization of the practice of medicine."

Mr. Lewin. I now offer in evidence under the same stipulation excerpts from Proceedings of the House of Delegates of the American Medical Association, 1931, appearing on page 4 thereof and headed "Bureau of Medical Economics," and also appearing on page 24 thereof headed "Hospital and Health Associations."

(Counsel requested permission to approach the bench.)

Mr. Lewin. If Your Honor please, this goes a little further and shows the nature of the Bureau of Medical Economics and tends to support this.

Mr. Leahy. I call attention to the date, which is 1931. We think that is too remote, antedating the charge in the indictment. These are generalizations from reports relating to general matters throughout the United States, and they cannot affect the specific and particular charge in this indictment, and they do not assist in any way in the background.

The Court. What allegations do they relate to?

Mr. Lewin. They relate to the next allegation.

The Court. This is to show that they had such a policy of objection?

Mr. Lewin. Yes.

Mr. Leahy. I submit that it would not be relevant on that point at all.

The Court. Of course I have not read it.

Mr. Richardson. There are sixteen local defendants here being tried on a conspiracy alleged to have arisen after the first of Jan., 1937.

The Court. I will not read it unless it is necessary, but if it has any tendency to prove a policy of that sort on the part of the AMA I think it would be admissible, because, apparently the Court of Appeals has said that the recital of the background is proper; I am sure I am bound to accept that background as I see it. My chart is the Court of Appeals' decision, and I must follow that. If it has that tendency, then I think it would be admissible.

Mr. Leahy. May we have an objection running to this character of testimony antedating the indictment?

The Court. On the ground of its remoteness?

Mr. Leahy. On the ground of its remoteness and its irrelevancy and not being binding in any way on the defendants.

The Court. It is only admissible as to the defendant American Medical Association.

Mr. Leahy. Then we can make the objection and take the exception instead of continually delaying the trial.

The Court. Yes; upon that allegation.

The Court. I wish, gentlemen, if you have any other ground of objection you would call it to my attention.

Mr. Leahy. I will.

Mr. Leahy. Does that run to the same thing?

Mr. Kelleher. It goes to the competitive allegation of the indictment.

Mr. Leahy. What do you mean?

Mr. Kelleher. The allegation as to competitive reasons. This is all background.

Gov. Ex. 5 was received in evidence and read against the AMA as follows:

Excerpts from Proceedings of the House of Delegates of the AMA, 1931.

"Bureau of Medical Economics

The Bureau of Medical Economics is just being organized and ultimately will have all available information regarding the cost of medical care. So much misinformation regarding economics is being broadcast that it is certainly our obligation and responsibility to set this aright. This means a great deal of study and work, and is a task for those who have had much experience in these activities. There are few actual practitioners of medicine on the five-year committee on the costs of medical care. The statistical work of the committee has been tremendous, and a great deal of information will be available. It seems to me that a bureau made up of men from the Association would be better able to put the proper interpretation on the findings of this committee than would those in Government and public health work alone. This bureau must have the best man power that can be obtained."

"Hospital and Health Associations

In reports previously submitted to the House of Delegates, the Council has referred to organizations controlled by groups of laymen, or by individuals, offering medical and hospital service to any who will buy 'membership' and pay a nominal sum each month as 'dues.' Such schemes have been put into operation in various places and have failed within a few weeks or months because of inadequate income or because of failure to render good service. The Judicial Council has regarded these schemes as being economically unsound, unethical and inimical to the public interest.

Within the last year, some community hospitals have announced their intention to provide medical, surgical and hospital service to families on a flat rate basis. In at least one instance, such service has been offered to families for $35 a year, irrespective of the number of members in such families. In most instances, certain exceptions are made in that persons with chronic diseases are not entitled to receive the benefits of the plan and obstetric service is not supplied without additional compensation. The members of the Judicial Council doubt that it is wise to lead the people in any community to believe that all necessary medical and hospital service, even though chronic diseases and obstetric care be excepted, can be provided for the average

family for $35 a year. In the cases presented to it the Judicial Council has advised against the adoption of such plans by community hospitals because it is believed that they are not economically sound in that they may be unfavorably affected by conditions entirely beyond control under which contracts cannot be fulfilled. There are other aspects of the matter that readily present themselves for consideration involving the interests of physicians in the community who cannot participate in such plans."

Gov. Ex. 6 received in evidence and read against AMA, as follows: Excerpts from Proceedings of the House of Delegates of the AMA, 1932.

"Bureau of Medical Economics

Purpose, Functions and Method of Procedure.

Immediately following the establishment of the Bureau in March, 1931, the director formulated an outline of the purpose, functions and methods of procedure of the Bureau and the phases of medical economics in which work should be initiated as soon as possible, to serve as a guide for both study and administration.

The Bureau of Medical Economics is established to study all phases of general economics that have a bearing on the practice of medicine. In every consideration of medical economics it must be remembered that: 'A profession has for its prime object the service it can render to humanity; reward or financial gain should be a subordinate consideration. The practice of medicine is a profession.' Although business methods and economic principles are essential to an orderly conduct of the financial phase of the practice of medicine, all such methods and principles must serve rather than dominate the profession, must be secondary to the primary object of the profession, and must conform to the accepted principles of medical ethics.

The principles of medical economics, as they become established, should serve the profession as a sound guide in business and economics; they should never be perverted to defend even the border-line actions of the near charlatan.

The functions of the Bureau of Medical Economics are: (1) to collect, tabulate, study, criticize and prepare for publication and distribution data pertaining to the economics of the practice of medicine; (2) to furnish critical and con-

structive information and opinions by correspondence on the several phases of medical economics; (3) to encourage the adoption by individual physicians and medical societies of modern, sound, ethical business methods; (4) to urge medical schools to provide medical students with information concerning the economics of medical practice, and an outline of essential business principles which should be incorporated early in individual practice; (5) to develop, ultimately, a consultation service with respect to medical business methods.

The Bureau will endeavor to collect data on the following phases of economics:

Capital investment in medicine.
Care of the indigent sick.
Collection methods and agencies.
Contract practice.
Cost of medical education—students' expenditures—complete cost.
County and [illegible] dues.
Dispensari[illegible]d clinics.
Distribution of physicians.
Distribution of medical facilities.
Evaluation of patient's ability to pay.
General insurance for physicians.
General investments.
Group practice.
Health and accident insurance.
Industrial medicine.
Instruction in medical economics (college and extension courses).
Malpractice insurance.
Medical fees.
Office plans.
Office systems.
Panel systems (of foreign countries).
Physician's income.
Sickness financing.
Sickness insurance (compulsory and voluntary).
Sickness savings.
Sickness statistics.
State, county and municipal health department activities.
Thrift programs.
Workmen's compensation.

and such other phases of medical economics as may from time to time properly come within the scope of the Bureau's activities.

Opinions on specific, individual or local professional economic problems should be guarded or tentative until a general principle shall have been established to govern in the consideration of each special phase of medical economics. In all phases of the general subject in which the experience of large non-medical groups has led to the adoption of definite economic policies, due consideration will be given such findings and policies when seeking to establish economic principles for guidance of the medical profession.

Every question pertaining to medical economics will be considered impartially and without personal bias. Courtesy and fairness, with non-medical groups that touch some phase of medical economics, must mark every step of progress.

Policies and principles established after careful deliberation, supported by factual evidence and, wherever possible, by parallel procedures in the business, industrial or commercial fields will thenceforth govern in similar questions and situations.

When considering the economics of medical care, one must make a clear distinction between commercial and economic interests. Commercialism is characterized by: (1) unreasonable fees; (2) alleviation always predicated on cash in hand or no service; (3) unethical tendencies or practices; (4) destruction of scientific motive in both the individual and the profession at large; (5) transformation of the profession into a trade or business; (6) destruction of confidence in the profession; (7) an insidious tendency toward state medicine. Economics as applied to medical practice is predicated on sound ethical principles, constructive and reasonable: (1) alleviation of suffering, prevention of disease, pursuance of research and the dissemination of dependable information are recognized as the primary obligations of the profession; (2) there should be a just compensation for service rendered; (3) modern ethical business methods are necessary to provide the highest type of service at the most reasonable cost; (4) ethical business methods insure confidence in the profession; (5) correct economic measures insure adequate amount and quality of service to indigent as well as pay patients; (6) the use of ethical business methods and correct economic measures

serve to promote in the profession higher scientific attainments because of greater freedom from financial anxiety.

Detailed methods of providing the most economic medical service to both indigent and pay patients must differ according to local requirements, but the principles and policies governing the application of these methods must be universally applicable.

In many phases of medical economics, physicians must act as an organized group in order to accomplish the most worthy ends. Individual action along these lines will not be as effective or as free from error as collective organized action.

Whenever legislation limits or obstructs the most effective economic and high grade medical service, efforts must be made by organized medicine, after thorough study of the subject, to remove such limitations or obstructions.

New methods of providing medical care should be adopted only after a careful and thorough study of present medical facilities and the requirements for additional facilities. Duplication of effort and overhead expense is a principle diametrically opposed to correct economic methods."

The examination of Dr. Cabot was then resumed and he testified as follows:

I would regard it as perfectly proper for one of these group prepayment plans to seek consultations with other doctors outside of the group in serious cases; this has been the practice of various groups; I should think it would be highly desirable. I would consider it perfectly proper for them to seek such consultations with members of the AMA even though they might not be members of the particular group staff. If they were not they would be very limited in their consultations because a vast number of the physicians of the country are members of the AMA. I know of an instance in the State of California in which the AMA has indicated an attitude towards group practice on a prepayment basis. I have knowledge of an incident in Texas with regard to the attitude of the AMA towards group practice there. I gained that knowledge as the result of a decision of the Judicial Council made in a case coming from the State of Texas. I don't know specifically any incident in which the attitude of the AMA was manifested towards group practice in Arkansas. I have knowledge

only through documents but no personal communications concerning an incident in Miami, Florida. I have had in my own medical and surgical association in Boston no controversy with the AMA.

Cross-examination.

By Mr. Leahy:

I graduated in 1898 and before I graduated I went to the Massachusetts General Hospital, where I stayed fourteen months and in the meantime was teaching at Harvard and assisting my cousin, Arthur Cabot. From the Massachusetts General Hospital, I went abroad for about three years and when I returned I went to Michigan and from Michigan to the Mayo Clinic and after retiring from the Mayo Clinic back to Boston. I returned to Boston in 1938. While at the Massachusetts General Hospital, all appointments for the staff were made by the Board. Courtesy staffs originated after I left Boston; and while at the Massachusetts General Hospital any doctor who was licensed to practice his profession did not have the right to care for patients in the hospital. It was a closed hospital, with a staff appointed by the Governing Board and they were the only people who practiced in the hospital. There were no private patients in the Massachusetts General; and I don't think there could be legally at that time; a closed staff was the rule in those charity hospitals in those days. The hospital was a very old, chartered institution, with an original grant from the State, which resulted in the Governor appointing three out of nine of the members of the Board of Trustees. The hospital was supported by contributions and was a charity of the City of Boston. The Mayo Clinic was composed of a group of doctors, experts each in his own line. It was founded in 1887 in Rochester, Minn., and, while I was there, the clinic had 110 or 120 physicians on its staff. The only group notion about the Mayo Clinic is that it was a group of experts who had established themselves in Rochester and to whom patients who desired their services came for treatment. The clinic did not own its own hospital and it was operated as an entirely separate matter. The clinic neither owned nor operated any hospital, though it had its own equipment in its laboratories. The Mayo Clinic was not a consumer

clinic; it was just a group of excellent physicians or surgeons located at Rochester, Minn., who, by their skill and reputations now have people coming from the United States and, perhaps, the world for treatment. Anyone can go to the Mayo Clinic and demand their services at any time, and such treatments as are received are paid for by the patient and, if a patient were sent by the clinic to a hospital, the patient would pay the hospital and not the clinic. The Mayo Clinic does charity work also and work for medical indigents, that is, people who may not be paupers but who do not have available funds to pay for medical care. The founders of the Mayo Clinic were Charlie and Will Mayo. They were members of the AMA and both of them became presidents of the AMA years ago and at present there is a son of one of the original Mayo's at the Mayo Clinic and he is a member of the AMA. At present a considerable group of physicians and I have agreed to care for a group of patients in Boston and the doctors in this group also practice privately. The doctors as partners, five of them, asked a group of younger men to work together as a group and we stated that we would be glad to take as an associate physician any physician who is licensed to practice, who is a member of the Massachusetts Medical Society and of the AMA, having courtesy privileges at a hospital approved by the Council on Hospitals of the AMA. In that way the group thought it could certainly secure for its patients a group of physicians not the worst in the State, and agreed to accept as consultants in any field anybody who held a certificate from these modern certifying boards which have grown up in the specialties with the approval of the AMA. Of course, we also accept as consultants younger men who could not yet become certified but who within our knowledge or the knowledge of our associates are capable to the extent of their age and size. At present I do not enjoy hospital privileges at any hospital in Boston as I have had no occasion to treat private patients, though I felt that if I had occasion to treat patients I could do it at the Massachusetts General hospital or the Phillips or the Faulkner. My associates have privileges to use the hospitals, because the group will not take anybody who does not have access to a hospital and who cannot follow his patients to the hospital, as we do not believe it is sound practice to have a patient separated from his physician just because the physician has no hospital privileges. There are other organi-

zations or clinics similar to the Mayo Clinic near Boston; one is known as the Leahy Clinic.

I first joined the AMA in June, 1899. I have tried to follow the history of the AMA and have spent a great many years reading the Journal of the AMA, and it is, undoubtedly, today the most important medical journal in the world. I belong to my county medical association and to my State association, which are component and constituent associations of the AMA. The jurisdiction of the Judicial Council of the AMA is limited in a sense to appellate jurisdiction; I do not think that it originates anything. If a member of a local society is expelled, he may go on appeal to the state society and after that take an appeal to the Judicial Council. In other words, before a member is expelled from a medical society, he has the protection first of his own association, then of the constituent state association, and then of the Judicial Council of the AMA. In such matters the AMA itself does not originate the charges. The county association is subject to its own state control as it is a subdivision of the state society, and, with reference to its own local affairs, it elects its own membership and within the rules laid down by the state society as to who may be admitted, the county society may admit this membership as it sees fit and elects its own officers.

With reference to group practice, consumer group practice, there are but a very few consumer groups as they are a recent development in the group field, and by consumer group is meant a group of individuals who buy medical service. While the principle, on a little different setup, was tried in Europe, there are relatively few such groups in the United States. I first recollect seeing the Group Health in Washington in the autumn of 1937 or the early part of 1938 and that I first knew about it during the year 1937. At the request of some member of the association, either Kirkpatrick or Penniman, I met with these gentlemen in Washington and I spent three or four hours at its clinic, stayed overnight and discussed the clinic during the evening; I only went into the business organization of the clinic so far as to note what their scale of charges was and came to the opinion that, with a reasonably large group of subscribers, the amount of money they would have would be sufficient to enable them to carry on. I was impressed by the fact that at the time the number was not large enough to make certain, that if it would not grow, that it

could carry on and render the kind of service intended. They needed a thousand subscribers of fixed incomes. I believe that the subscribers would pay $2.00 per month or $25.00 per person a year; that on that basis I thought the clinic could be operated at about $25,000 as an irreducible minimum. Though such things don't start in a vacuum that amount would be sufficient to enable them to carry on according to their program and not be worried as to whether they were going to get by. On my visit I went around from one department to another inspecting the equipment and thought it sufficient; I wasn't informed or concerned as to where the funds came from to buy the equipment. Subscribers might have dependents and these dependents might pay a sum less than the subscriber and I only went into the financial side in very general terms, as I was chiefly interested in ascertaining whether or not a good job could be done there. The surgeon at that time was Dr. Selders. Beyond that experience, other than correspondence and publications, I never made a further study of Group Health. When I first saw it, it was operating, and I have never been in the clinic since that time.

I have felt for many years very strongly that any doctor licensed by the state to practice medicine ought to have hospital privileges. I do not know of any state, city or hospital where my thought was put into effect. All hospitals with which I am most familiar have the staff look into the qualifications of an applicant for the governing board and the application is usually acted on as the staff recommends to the board. I am a firm believer in putting them on the staffs, especially younger men, and letting them develop. On general principles, if a doctor had just graduated from a residence service, had been licensed to practice, and should seek the right to practice general surgery of all kinds in a hospital, he should demonstrate his ability before being put on the staff and I am skeptical about the hospital giving that person the right to perform any and all kinds of operations, explaining that he should do lesser operations first and then those of moderate severity, so that the hospital staff could see how he actually behaved and performed, as you wouldn't want to give privileges of practicing on mankind unless the man was a trained man, of which the hospital had plenty of knowledge. There are people who by reason of their residence training are entirely qualified by that training alone. Where there was a question of the

legality of the practice of a given physician, it would sound reasonable for the hospital staff to hold up his application for privileges until that question had been determined. If a doctor had been notified by the Federal District Attorney to desist from a certain practice and that doctor had asked for general hospital privileges, it would be good, reasonable advice to advise the hospital that it should withhold privileges pending the determination of the question.

I don't know what is meant by the terms "adequate medical care" or "complete medical care" and I don't think anybody knows their meaning; complete medical care means the medical care covering the whole field of preventative medicine, diagnosis and treatment in all fields and is all-inclusive; it means that there is no condition from which the patient complains which you will not treat him for. If I felt the quality of medical care of an organization was not good, I would not think it would be in the public interest to operate an organization rendering such care. The question of good medical care must necessarily be determined by a group of medical men; I saw two physicians at the Group Health clinic; they seemed to be doing a pretty good job and I observed no over-crowding in the waiting room. The patients seemed to come along in reasonable sequence and the organization seemed to be taking care of the patients at a reasonable rate. I said this morning that I think I rendered better service or that a man could render better service where he was engaged with a group, than he could individually. I can compare it with the conditions under which I worked in Boston and Michigan, which was frankly group work, and at Rochester. In the first place there was no waste motion; no loss of time, going from one patient to another, from hospital to hospital, a tremendous amount of wasted motion in the earlier days. Then I was constantly unable to get prompt opinion or advice when I wanted it. In the group there was close articulation between yourself and the other physicians and specialists; and then quite clearly I was free from the feeling that I had to pay any attention to the financial or economic status of the patient. I had no worry at all whether this patient, if I told him something he didn't like, whether he would go to somebody else and not pay his bill. Working in a group that feeling is entirely removed and I feel very clearly and so felt that I could give a very straightforward opinion; it is on sounder ground in treating and in viewing the

patient in whom I had no financial or economic interest, they were just sick people to me to whom I gave my opinion, I did the best I could and if they didn't like it they could throw me out of the clinic, but I could be honest. No matter what the group is, producer group or consumer group, whatever staff they hire should be competent and if a competent staff were not there to render the service they claim or offer, that group would not be operating in the interest of the public; a proper staff in a group depends on local conditions, how large is the group of subscribers, at what distances do they live away from the clinic and away from each other; I don't want to put the size of the staff entirely on the basis of the number of patients. I should think it would be possible to have a standard consumer plan which would give complete and good medical care. A committee from the eastern part of the country spent a good deal of time in trying to draw up principles from which a guide could be made on that subject; Michael Davis was chairman of that committee and we spent a good deal of time associated with groups and we drew up what you might call a draft of the salient features of the plan. Some of the members of the committee were Michael Davis, Kingsley Roberts, Clifford Loos, Allan Butler and Ogden. The group was a committee of doctors. I do not think a committee of laymen would be able to formulate a plan for the distribution of medical care without consultation with doctors. While I was in Washington I did not examine any other clinic similar to Group Health or any of the industrial clinics.

Since I started to practice, hospitals have advanced to a marked degree of efficiency. It is a responsible thing, one of the most important responsibilities an ordinary layman can take on, to operate a hospital under proper standards of care. In general terms a hospital cannot satisfactorily train internes unless it is of considerable size. Graduates of medical schools, while they require more experience, are relatively, fairly well equipped, much better than they were forty years ago to treat patients. Twenty-five years ago there were about 120 to 130 medical schools in the United States and there are approximately 72 or 73 today; and this occurred because a great many schools were giving a poor article of education and the issuance of a report of Carnegie Foundation had a profound effect on the American Association of Medical Colleges and the AMA, which or-

ganizations brought pressure which resulted in the disappearance of some schools and the consolidation of others. The 72 schools still training doctors are Class A. The AMA has been interested in seeing that proper standards have been maintained for the training of internes in hospitals for at least fifteen years, while its interest in medical schools dates much farther back. The American College of Surgeons has since 1920 been interested in seeing that hospitals have proper equipment. It is certainly to the public interest that a group of experts such as the AMA should be interested in the conduct of hospitals. I believe that the public responsibility for the conduct of medical schools remains in the university and cannot be transferred to any other body, though it is in the public interest for the AMA to do the best it can to see that those standards established by those schools are high and in the public interest. I have never inspected the local hospitals in the District of Columbia, and I do not have a wide acquaintance among the members of the local medical society and I do not have any available information with reference to the number of doctors in the District of Columbia or how they are divided so far as area is concerned.

Redirect Examination.

In my opinion the standards which the AMA should be interested in, in order to be in the public interest are those which pertain to the study and care of patients. In that field they are undoubted experts. In other fields they might not be experts, but whether a given hospital is equipped and does in fact give good care to patients, is very much the business of a large and well developed medical organization. It does not occur to me that a professional association can control a hospital. The control must remain with the lay board. The lay board will naturally give great weight to the opinion of a professional association on professional questions, but there could be no question of control. The approval by the AMA of a hospital for interne and resident training is a very important thing to the hospital, because it establishes with the public the fact that this hospital is an organization that has equipment and staff which will authorize you to assume that it will give good care.

Q. You testified, Doctor, that it was in the public interest for the AMA to take an interest in hospital standards. Now

I ask you whether it is in the public interest for the AMA to insist, as a condition for giving its approval to a hospital, that all of the members of the staff of that hospital be members of the AMA?

Mr. Leahy: Objection.

The Court: You have drawn in the public interest in your own questions, Mr. Leahy. I think perhaps it is proper.

Mr. Leahy: It is secondly objectionable because of the use of the word "insist."

The Court: I do not know what significance that word may have. The witness may answer the question.

Mr. Leahy: Exception, your Honor.

A. I should be very doubtful as to whether any professional group ought to be in the position to declare that its members only are competent people in the profession. It is entirely within my knowledge that able physicians have gone on for years, or for their lifetime, without being members of the American Medical Association. So I should be very fearful of giving to any professional body the right to say that their members and their members only were capable of giving good care. I think it is risky extension of power to any group.

The AMA has a very important interest in the character of the staffs of a hospital; it has a machinery to inspect and examine these hospitals, which can only be done by some well organized group. The AMA has a staff of expert people who spend a great deal of their time and come to know a great deal about technique in studying hospitals, and, as a group of experts giving advice to governing bodies, the AMA has a very important function. They can safely give nothing but advice because the control must lie with the governing board and cannot safely lie with a professional group.

In the matter of the question of passing on the application of a doctor for hospital privileges, if I had received notice of the objections of the District Attorney in that case to the group with which the doctor was associated or that the group was a corporation practicing medicine without itself having a license and was engaged in the insurance business without complying with the law, such a situation would present a very difficult question. The opinion of the District Attorney could not affect my opinion of the capacity of an applicant, which must depend upon his professional

qualifications and not upon intricacies of the law, which do not run at all to his ability to look after sick people. Under such circumstances, in advising the hospital in regard to the admission of this physician for courtesy staff privileges I would advise the hospital to entirely disregard the opinion of the District Attorney and examine the qualifications of this physician who was a candidate for their staff. By qualifications I mean professional qualifications.

Q. Just what did you mean when you answered Mr. Leahy's question on Friday in the way in which you did?

A. Perfectly frankly, I misunderstood him. I understood the charges against this hospifal were of an entirely different character. Let us be perfectly brutal and frank about it. I thought it was charged that this was an abortion.

Q. And it was on that assumption that you gave the answer which you did give?

A. Right.

If the District Court of the United States had decided that such charges were unfounded, then any possible disability to the applicant would be removed. If an applicant for courtesy staff privileges had graduated from the University of Oklahoma or the University of Oklahoma Medical School, had practiced privately in one of the large cities of the United States, both medicine and general surgery, for nine years, that, thereafter, the applicant had enrolled as a post-graduate student of surgery in the University of Pennsylvania and completed satisfactorily a two-year post-graduate course and received a degree of Master of Medical Science, and, further, that during the two-year course the applicant held a residenceship in surgery at the Worcester City Hospital under a preceptor appointed by the post-graduate school of the University of Pennsylvania, and during such residency performed satisfactorily to his preceptor, several hundred operations, some of them major and some of them minor, some of them in which he acted as an assistant and in some of them he took the lead, that a great deal of that surgery was abdominal or pelvic surgery, I should feel required to admit such surgeon to the staff of a hospital to practice general surgery, with reasonable limitations as to the more difficult and trying situations. The fact that that applicant happened to be the general surgeon for a large group of patients associated in a prepayment clinic would have no bearing on the question, as

I would be concerned only with the doctor's qualifications. I would not hold it against the applicant if he asked for broader privileges than would perhaps be accorded to him.

Q. And do I understand you would recommend to the staff to admit him to those privileges to which you felt he was by reason of his training entitled, and deny him those privileges for which you felt he did not have adequate training?

Mr. Leahy: Objected to.

The Court: He may answer that question.

The Witness: Oh, yes; I have no doubt I should do that.

The formation of the consumer type of group practice involves two or three very different problems, financial and economic. In those problems the group should try to obtain wise counselors in those fields from laymen. In so far as the medical organization, equipment and medical capacity are concerned, clearly the medical profession are the only experts on whom the community may rely in those special fields. Clearly no one else is qualified to speak concerning them; I would seek no other advice from medical men. As conditions vary in different parts of the country, you cannot make the same organization work equally as well under such varying conditions, and, in financing such a group, laymen probably would be consulted; lawyers would be consulted in the preparation of the contracts of the group; known existing practices of similar organizations should be examined. If a group undertakes to do a definite thing, provide medical care for its subscribers, the fact that it does not undertake to do charity work does not mean that such a group is against the public interest nor unethical. The fact that a doctor associated with a group devotes himself to the group without bearing any part of the care of the indigent, does not mean he is neglecting his share of the responsibilities of the medical profession for the indigent. The "fee-for-service" doctor can afford to do charity work by levying a tax upon a small class known as rich; this gives him funds on which to live in a decent fashion and care for a group of people who can contribute nothing. Certainly no stigma is attached because he practices on patients who have subscribed to this organization when the group doctor applies for hospital privileges. When I said the Journal of the AMA was an outstanding medical journal of the world, I was thinking of the Journal as a whole. In recent times a

subordinate section of the Journal has dealt with problems rather loosely referred to as medical economics and in that section a different policy has been adopted. Many articles are prepared by the salaried staff of the AMA. Often for the purpose of producing a perfectly definite point of view, which may or may not represent the scientific view, there has been allowed no opportunity for discussion of the presentations. Many of them, in my judgment, and in the judgment of a good many other people, have been a pretty incomplete statement with very important omissions, and yet, they are the source of information of a large number of busy physicians who cannot possibly go to original sources. I have felt very strongly that it was essential that there should be a possibility of pointing out these omissions and weaknesses, and the differences of opinion which has been done regularly in the scientific portions of the Journal. This has been frowned upon and has been, I think, a very serious detriment to the proper presentation of the facts in these fields. I would go so far as to say that there have been many articles published in that section of the Journal which would not stand up under criticism a moment and which if presented to a scientific body would be torn limb from limb.

In the matter of appeal to the Judicial Council, the expulsion of a member does not really "stick" until it has been passed upon by the Judicial Council. The rules and principles of medical ethics of the AMA are promulgated under the authority of the delegates of the association and such rules are intended to be binding on local societies. On various occasions questions concerning their interpretation have been referred to the Judicial Council. When ethics which are supposed to guide a profession undertake to invade fields in which the profession cannot have particular knowledge, you are getting on pretty thin ice. The opinion of experts in the medical field when applied to economic questions would not be very binding on anyone. I should feel very much inclined not to be bound by them myself.

Recross-examination:

The AMA is composed of about 110,000 doctors. The opinion of 110,000 doctors is worth consideration, particularly as that opinion relates to the practice of the medical profession, and, in so far as the expert opinions of the

AMA are confined to questions of medicine, that opinion is of value, though it should not be taken seriously when it involves financial, economic and social readjustment questions. I do not agree with the ethics of the AMA which prohibits solicitation. I think that organized medicine has chucked the prohibition against a doctor advertising out the window and the rest of us need not concern ourselves about it. I do not agree with the principle of ethics which forbade physicians to consult with irregular practitioners, the implication being that members who are not members of the medical profession should not be in consultation with men who are. I have disagreed for 35 years with that prohibition and have never embraced it, though it has been in force for a very long time and is the subject of a very fierce controversy. The profession has been acting under the code of ethics of the AMA for many years and the origin of the document goes back for more than a century. The fundamentals of the code of ethics were laid down on the oath of Hippocrates. Individual professional man should not advertise his wares. When a group of individual doctors get together, it seems absolutely essential that there should be a satisfactory method by which the public may obtain the information concerning the group and the prohibition is likely to make it difficult or impossible for the public to obtain information on which they can come to a conclusion. The Mayo Clinic at times has come pretty close to advertising. The Mayo Clinic does not solicit patients. I should be unwilling to say that the Leahy Clinic in Boston does not solicit patients; it does not advertise. I do not know of a producer clinic that does advertise. The consumer clinic with which I am associated has tried not to advertise. I believe in the group method and want to see it tried. The group method practice of the Northern Pacific Railroad is successful; the Stanocola Group has been doing work and it is a consumer group. I do not know of the eight groups operating in Washington similar to the Northern Pacific Group and the Stanacola Group. Group Health I suppose wouldn't take a person as a subscriber if he appeared to be sick and would wait until he got well. The sick man is the one who needs medical care. They require their members not to overload themselves with an unreasonable number of sick people at the time of admission; they must have an average cross-section, and it is on this basis that they assume liability to do the job. The custom in other groups is

to admit patients, some groups require a physical examination; if the patient has certain disabilities those are made exceptions for which further payment must be made. They try to get a group of average people. There is no prohibition that sick people cannot belong to consumer groups, the only prohibition that I am aware of is that they cannot be looked after under this particular contribution. The consumer group cannot overload itself with too many sick people at average admission rate fee; if they do, they must charge additional fees or else leave the general doctor to take care of them. I have never studied the by-laws of Group Health and no one has ever presented those by-laws to me for advice.

The AMA should keep in close contact with the affairs and the administration of the hospitals throughout the country and that is in the public interest. I think that they should inspect hospitals in order to have an opinion which they may place at the service of the public as to the standards of the hospitals. If the AMA sought to establish a policy in the hospitals by persuasion and advice that the members of their staffs should be members of the AMA, I think they would be cutting pretty close to the line of minding somebody else's business. Boards of trustees of hospitals usually seek the advice of the medical profession as to who ought to be appointed to their medical staffs and it is not contrary to the public interest that the medical society of that particular locality should recommend its own members as staff members, or should recommend that the hospital try to select its membership from the medical society, so long as it remains in the field of recommendation. There is no harm in making such a recommendation and stating the reason for such advice. I discussed my answers since I testified last Friday with counsel for the prosecution, but I did not go over all my testimony in preparation for redirect. Any group organized to furnish medical care needs the advice of physicians on problems involved in medical care and the necessary equipment to give it, though they should consult other people on purchase details or business problems. The articles which I criticised in the Journal of the AMA began to appear in the middle twenties and went on for a number of years and pertained to compulsory health insurance in England and other countries and on group organizations and experimentation in the formation of groups. In making recommendations for the appoint-

ment of an applicant to a hospital staff, I would disregard the District Attorney's opinion that the doctor was connected with an organization engaged in the illegal practice of medicine, even though that opinion were supported by the responsible prosecuting officer of the particular city that the organization was engaged in illegal practices. All I am concerned with is whether the applicant has the qualifications of a physician. If a physician was qualified but didn't have a license, I would not recommend that qualified doctor to a hospital staff. If the question of the legality or illegality of the practice involved was pending before a court in that particular community, I would recommend that the hospital wait, out of respect to the court, for its decision before admitting the applicant to the hospital staff.

Further redirect examination:

The articles that I criticised in the AMA Journal were articles dealing with medical economics. These articles did not represent the individual advice and opinion of 110,000 doctors. If the AMA indicated to a hospital that it would be withdrawn from its approved list for intern and resident training unless it confined its staff to members of the AMA, this would be a grossly improper procedure which is wholly against the public interest. It seems to me that a medical association is not a proper judge of what is in the public interest and I wouldn't pay the slightest attention to a decision in that field.

DR. BOWMAN C. CROWELL, a Witness for the United States.

Direct examination.

By Mr. Kelleher:

I am a doctor of medicine in the field of pathology and an associate director of the American College of Surgeons, an international organization of surgeons composed of 13,000 fellows. Fellowship is obtained on application and the presentation of proper credentials which require that the applicant has been graduated from a medical school for seven years and furnish references to surgeons who are acquainted with him and his work. If approved the applicant must then submit certain other qualifications with presen-

tation of records of surgical work that he has done. Since I am not a surgeon, I am not a fellow. The college was founded in 1912 by Dr. Franklin Martin, Dr. John B. Murphy, Dr. Edward Martin, and Dr. A. J. Ochsner, and several others. The college is for the purpose of improving the standard of the practice of surgery. Since 1918 one of its prime activities has been the standardization of hospitals, and it approves hospitals which meet its standard. The college does not require that before a hospital can be approved its staff have on it only members of the American College of Surgeons or of the AMA, as it is an international association and approves hospitals other than those in the United States. The college has two associate directors, an executive secretary of the board of regents, assistant directors, field representatives, and a general clerical staff, who are paid employees of the organization. The organization is governed by a board of regents elected by a board of governors, who are elected by the fellows of the college. The college has an executive committee empowered to act between meetings of the board. The fellows have one formal meeting a year; the board of governors meets annually; the board of regents at different intervals, sometimes twice, sometimes four or five times a year. At one time the college had a medical service board, appointed by the then president, Dr. Bentley Squier. The Medical Service Board was to study the provision of more adequate medical service to communities. The Medical Service Board was appointed on July 15, 1933, and was composed of Dr. Robert B. Greenough, Chairman; myself, as Secretary; Dr. G. Harvey Agnew; Dr. Charles A. Dukes; Dr. Franklin H. Martin; Dr. C. Jeff Miller; Dr. Eugene H. Pool; Dr. Arthur M. Shipley; Dr. J. Bentley Squier; and Dr. S. Marx White. Dr. Agnew, Dr. Martin and myself were not in private practice, though the other members of the committee were. The Medical Service Board conducted the study for which it was appointed and it was familiar with the findings of the Committee on the Cost of Medical Care. The Medical Service Board made a unanimous report to the board of regents of the college, though no formal vote was taken and the board of regents approved the report of the Medical Service Board.

Gov. Ex. 7 received in evidence and read to jury, as follows:

"Report of Medical Service Board.

On July 15, 1933, on authorization of the Executive Committee of the Board of Regents of the American College of Surgeons, Dr. J. Bentley Squier, President, appointed a Medical Service Board to study the provision of more adequate medical service to the whole community. The Medical Service Board consists of Robert B. Greenough, Boston, Chairman; Bowman C. Crowell, Chicago, Secretary; G. Harvey Agnew, Toronto; Charles A. Dukes, Oakland; Franklin H. Martin, Chicago; C. Jeff Miller, New Orleans; Eugene H. Pool, New York; Arthur M. Shipley, Baltimore; J. Bentley Squier, New York; S. Marx White, Minneapolis.

On June 10, 1934, the Medical Service Board made a report to the Board of Regents of the College which was approved by that Board. The report is a statement of principles which should be observed in the development and conduct of prepayment plans for medical and hospital service, and does not propose any specific plan. The report follows:

'Report of Medical Service Board of the American College of Surgeons, June 10, 1934.

The Medical Service Board of the American College of Surgeons respectfully submits the following report to the Board of Regents.

1. The American College of Surgeons affirms its interest and its desire to cooperate with other agencies looking toward the provision of more adequate medical service to the whole community.

2. The College believes that it is the duty of the medical profession to assume leadership in this movement and to take control of all measures directed to this end.

3. Encouragement should be given to the trial of new methods of practice designed to meet these needs, and a careful evaluation of their success should be the duty of the medical profession before they are offered for general adoption. All such new and experimental methods of practice must be conducted strictly in accordance with the accepted code of ethics of the medical profession in order that the interests of the patient and of the community may be protected.

4. The College recognizes for immediate study four groups of the population for whom more adequate medical service should be made available, as follows:

a. The indigent.

b. The uneducated and credulous members of the community.

c. Those who because of limited resources are unable, unaided, to meet the costs of serious illness and hospitalization.

d. Those living in remote districts where adequate medical service is not obtainable.

5. The care of the indigent sick should be a direct obligation upon the community and (unless otherwise compensated by intangible benefits such as staff and teaching appointments, opportunity and experience) physicians fulfilling this public service should receive remuneration.

6. The College should work in cooperation with other medical groups in order to dispel the ignorance and credulity of the public, and to bring the people to a proper realization of the protective and curative resources of modern medicine.

7. The American College of Surgeons recognizes that the periodic prepayment plan providing for the costs of medical care of illness and injury of individuals and of families of moderate means offers a reasonable expectation of providing them with more effective methods of securing adequate medical service.

A number of different plans for the organization of such services have been proposed, although few have been in operation long enough to permit definite conclusions in regard to their success. It is to be desired that these experiments be continued. Conditions differ to such a degree in different parts of the country that a specific plan which is practicable in one place may require modification of details in other communities. The varying restrictions imposed by present insurance laws in different states further complicate the problem.

Periodic prepayment plans providing for the costs of medical service may be divided into two classes:

A. Payment for medical service.

B. Payment for hospitalization.

Plans for the payment of hospitalization alone (Class B) without provision for payment for medical service, may be considered the first project to be undertaken in the average community.

The American College of Surgeons believes that certain general principles can and should be established, the observance of which will tend to obviate known difficulties and dangers which may threaten the success of these special forms of medical service. These principles are as follows:

a. Periodic prepayment plans for medical service should be free from the intervention of commercial intermediary organizations operating for profit. After deduction of the clerical costs of operation of the fund and such accumulation of reserve as may be advisable in the interest of the contributors or may be legally imposed, the full amount paid by the contributors should be available for medical and hospital services.

b. In the interest of the patient, the organization of plans for the periodic payment of medical and hospital costs must be under the control of the medical profession. The medical profession must act in concert with the hospitals and such other allied services as may be involved in the individual project, together with a group of citizens representative of the whole community and of industry who are interested in the successful operation of the plan.

c. The principle of free choice of the physician and hospital by the patient must be assured to the end that the responsibility of the individual physician to the individual patient shall always be maintained. When hospitalization is required, this choice must of necessity be limited to the physicians and surgeons who hold appointments on the staffs of the hospitals participating in the plan or to those physicians and surgeons who are acceptable to the hospital. It is further recommended that only approved hospitals be admitted to participation in such a plan.

d. The compensation of the physician and of the hospital should be estimated with due regard to the resources available in the periodic payment fund and should be based upon the specific services rendered.

e. The organization and operation of any plan of this type must be free from any features not in accordance with the code of ethics of the medical profession which code has been established for the protection of the patient.

f. The medical organizations participating in such a plan must assume the responsibility for the quality of service rendered.

8. Periodic prepayment plans for the medical and hospital service should eliminate many of the conditions which have brought about the development of industrial contract practice. Until such plans have been more widely established certain general principles are here formulated with a view to the elimination of the commercial features of such forms of medical service.

a. The Minimum Standard for Industrial Medicine and Traumatic Surgery of the American College of Surgeons should be accepted.

b. Physicians and surgeons, qualified as in paragraph 2 of the above Minimum Standard may properly be employed on a full-time or a part-time basis by industrial organizations to provide medical and surgical service for their employees, as follows:

i. To provide emergency service and first aid in injury or disease, and to provide adequate medical or surgical care for industrial injuries and diseases. Medical and surgical care of the families of employees, and of employees themselves, except for emergency and industrial injuries and diseases, should be provided by the industrial physician only in remote districts where other adequate medical service is not available.

ii. To provide pre-employment and periodic physical examinations.

iii. To study the hazards of the particular industry and to cooperate with other agencies in effecting such measures as may be needed for the prevention of injury and disease.

iv. To keep accurate records such as may be required by local Workmen's Compensation laws, and so complete as to serve for scientific investigation of industrial hazards with a view to their further prevention. These records

are privileged communications, subject always to due process of law.

c. The sale of a contract by an industrial organization to an individual physician or group of physicians for medical and/or hospital service for its employees encourages commercial competition and is to be condemned.

d. Unethical practices in publicity, advertising, solicitation, and competition, either of a professional or of a financial nature, must be eliminated.

e. The accepted code of ethics of the medical profession, which is designed to protect the best interests of the patient, should apply to industrial medical service as to all other forms of medical practice.' "

Referring to the first sentence of sub-paragraph (a) of paragraph 7 which reads: "Periodic prepayment plans for medical service should be free from the intervention of commercial intermediary organizations operating for profit;" it was not the intent of the Medical Service Board to recommend against the use of a non-profit organization to handle the administrative and clerical matters of the plan. That paragraph is limited to the intervention of commercial intermediary organizations operating for profit. That part of subsection (d) which says that the compensation of physicians should be based upon specific services rendered, means that the payment to the physician who participates in the plan should be proportionate to the services which he actually rendered and that he should not derive financial benefit merely on account of being on the staff of a hospital which happens to render this service. The board did not pass upon the question of a doctor accepting a salary for services in such a plan and did not make any statement of principle concerning the propriety of a doctor associating himself with prepayment plans on a salary basis, because the board was concerning itself with a statement of principles and not details of any specific plans. The question of whether a doctor should be paid on salary was a matter of detail depending upon the particular type of plan, in the board's opinion.

Paragraph 8 of the report in using the language "such forms of medical service" means periodic prepayment plans for medical and hospital services. Sub-paragraph (c)

of paragraph 8 of the report refers only to industrial contract practice and not to prepayment plans in general. Sub-paragraphs (a) to (e) under paragraph 8 were intended to apply to industrial medical practice and not to prepayment plans.

Cross-examination.

By Mr. Leahy:

Industrial medical practice is medical practice provided by industries or industrial organizations to provide emergency service and first aid in injuries or diseases and has been quite prevalent and common. When the report was drafted, the committee did not have under consideration any particular group scheme but had the general subject of group plans under discussion. The college believes it is the duty of the medical profession to take control of all measures and that the plans that were drawn up or would be drawn up should be acceptable to the medical profession. It was felt that the medical profession were the arbitrators as to the success of the plans, that the plans must be conducted strictly in accordance with the accepted code of ethics of the medical profession, and by that it was generally intended that in the United States the code of ethics and principles of ethics of the AMA should apply. If the plans were conducted in accordance with the accepted code of ethics of the profession it was felt that that would safeguard the interest of the patient and the community. The term "credulous" as used in Section 4 of the report includes those members of the community who might be easily misled by advertising claims for services which would be rendered to them, that is, those who easily believe representations as to what they will get for what they will pay, and it takes into consideration the fact that the public as a whole is not competent to choose their own medical care and that there is that element in the community which must be protected against such representations. The same group is referred to in the sixth paragraph of the report. Paragraph 7 refers to such a periodic prepayment plan as is being conducted in accordance with the accepted code of ethics of the medical profession. The insurance laws of the states differ and arrangements for prepayment plans that are made must conform to the laws of the states in which

they are promulgated. Sub-paragraph (b) on page 2 is intended to obviate prepayment plans being put under the guidance of commercial organizations of laymen; in other words, it was the intent of the report that the medical profession should be the profession which controlled these plans. The report contemplates that only approved hospitals be admitted to a participation in such plans; as the college is made up of surgeons from the United States, Canada, Mexico, the South American countries, Cuba, Porto Rico, England, Scotland, Wales, India, China and others, it was intended to leave approval to the approving board or organization in each of these various countries. The only two approving bodies intended in the United States by the report are the American College of Surgeons and the AMA, and that in so far as the term "approve" is applied to hospitals the report meant only hospitals approved either by the college or by the AMA. Sub-paragraph (e) of the report refers to the code of ethics of the AMA. Sub-paragraph (f) of the report, according to my strictly personal interpretation, means that the medical profession should take charge of the quality of service rendered under the plans. It was not intended that any lay group, lay board of trustees or lay board of directors should assume the responsibility for the quality of service rendered. Paragraph (c) of Section 8 on page 3 of the second column of the report means to condemn a practice whereby one doctor engaged in industrial practice might underbid another in order to get the contract for the care of those in the industry and that such a practice is to be condemned. Sub-paragraph (d) provides unethical practices in publicity, advertising, solicitation and competition, either of a professional or of a financial nature, must be eliminated. The Board had permanently in mind observing the ethics of the AMA and that is why we put in paragraph E, which states:

"The accepted code of ethics of the medical profession, which is designed to protect the best interests of the patient, should apply to industrial medical service as to all other forms of medical practice."

The majority of the fellows of the college are members of the AMA. The college since 1918 has been inspecting and approving hospitals in order to elevate the general standard of the practice of surgery, improve care for pa-

tients, and improve conditions in the hospital. The inspection of a hospital depends upon the convenience or opportunity which particular inspectors may have to make the examination. While there is some communication with all hospitals each year, they are not usually inspected annually. On an inspection, the hospital is either approved or provisionally approved. Provisional approval means that in some respects they do not quite come up to our standards but they have given evidence that they are seeking to do so. The college publishes a report of approved hospitals each year. The list of hospitals identified as Def. Ex. Crowell, Cross Examination, No. 1, for identification, is a list of hospitals approved by American College of Surgeons, and similar lists are published each year. Membership in the college covers all parts of the country. In addition to the usual qualifications for membership, a very close investigation is made into the men who apply. In admitting to fellowship the ethical qualifications of a member enter into the question. In testifying that the college has no requirement that members of the staff of a hospital should be members of the college, that was because the college is an international organization, is restricted to surgeons, and upon the staff of any hospital there are others than surgeons, so the college could not require under its rules that the staffs of hospitals be composed only of surgeons. There is no requirement that surgeons on the staffs be members of the county associations. They should be licensed to practice in their communities and in good standing. The college does not attempt to recommend directly the personnel of any hospital. We expect the hospital to conform to our standards. We do not dictate personnel. We deal with the hospital as a whole rather than with the individual members of the staff.

Redirect examination:

To my knowledge no surgeon has been excluded or expelled from membership in the college for participation in a prepayment plan. The college has never threatened to withdraw approval of a hospital because the members of the staff were engaged in a prepayment plan. The college has never withdrawn approval of a hospital because of the participation of the staff of the hospital in a prepayment plan.

Recross-examination:

The college would, however, threaten to withdraw approval if there were members upon the staff of a hospital engaged in unethical practices if that knowledge came to the college.

Mr. Kelleher then offered in evidence Gov. Ex. 8, portions of the proceedings of the House of Delegates of American Medical Association, June 11 to 15, 1934, appearing on page 42 under the heading "Resolution on the Apparent Attempt of the Board of Regents of the American College of Surgeons to Dominate and Control Medical Practice" and the portion of the proceedings appearing on page 9 under the heading "Report of the Judicial Council."

The defendants objected to this evidence, first, on the ground that the material offered is irrelevant and immaterial; second, it has nothing to do with the condemnation of the principles involved in the report; and third, as it merely expresses its condemnation of such tactics, and this apparent attempt of the board of regents of the American College of Surgeons to dominate and control the nature of medical practice. Objection overruled, exception allowed.

Gov. Ex. 8 received in evidence and read to jury as follows:

"Dr. George Edward Follansbee presented the following report:

A resolution introduced by Dr. Charles J. Whalen, Illinois, calls attention to a recent action by the Medical Service Board of the American College of Surgeons, approved by its board of regents, advocating publicizing a procedure for furnishing medical and hospital care for certain classes of the population. No consideration appears to have been given to policies or procedure previously adopted by the American Medical Association, of which the College of Surgeons are members. The American Medical Association is the one organization representing the entire body of physicians constituting the medical profession, and by virtue of that fact is the only organization qualified to speak for the varying interests and policies of the profession as a whole.

Recurring proposals concerning the entire practice of medicine from small sections of the profession, without due

regard to the policies of the entire profession, as represented by the American Medical Association, when presented to the public through other channels than the representative body are confusing to the public mind, are harmful to the profession, and give aid and assistance to those bodies and individuals who are attempting to revolutionize medical practice. The Judicial Council therefore recommends the adoption of the resolution as follows:

Whereas, the American Medical Association, including 100,000 members, is the only democratic body representing the organized profession of this country through delegates regularly elected through county and state medical societies; and

Whereas, other medical organizations and groups, representing selected groups of specialists who have from time to time issued pronouncements of policies in the field of medical economics and medical practice, which do not represent the views of organized medicine and which purport to guide the medical profession and the public in the administration of medical affairs; and

Whereas, the House of Delegates of the American Medical Association has repeatedly condemned the issuing of said announcements on policies which seriously embarrass the attempts of this organization to secure adequate care for the health of the American people and to protect the ideals of the medical profession; and

Whereas, the Board of Regents of the American College of Surgeons assembled in Chicago on June 10 promulgated a policy, including a prepayment plan for medical care, restricting so-called private hospitals to the members of the staffs of such hospitals, and to physicians acceptable to such staffs; and

Whereas, this action of the Board of Regents has been spread to the people of the United States through the public press on the opening day of the annual session of this House of Delegates:

Now, Therefore, Be it resolved that the House of Delegates and the American Medical Association expresses its condemnation of such practice and of this apparent attempt by the Board of Regents of the College of Surgeons to dominate and control the nature of medical care and practice; and be it further resolved that the House of Delegates requests the board of trustees of the American Medical

Association and the judicial council to ask the Board of Regents of the American College of Surgeons, who are themselves members of this American Medical Association, to explain the reason for their action and to justify the attempt of a small group within a specialistic organization to legislate for all the medical profession in this country, truly represented only by the American Medical Association.

The report of the judicial council was adopted on motion of Dr. C. E. Humiston, Illinois, seconded by Dr. Albert Soiland, Section of Radiology, and carried unanimously."

RAYMOND R. ZIMMERMAN, a witness for the United States.

Direct examination.

By Mr. Lewin:

I am at present and have been since August, 1939, employed by the Council of Personnel Administration, a division of the United States Civil Service Commission, which concerns itself with personnel problems of the Government. In 1936, 1937, and 1938 I was Director of Personnel of the Federal Home Loan Bank Board and concerned myself with personnel problems of the Home Owners Loan Corporation, and had been engaged in such personnel activities since March, 1934. The personnel department deals with problems of employments, wages, promotion, training, policy, labor policy, working conditions and employee health—the human problems of the organization. Prior to working for the Government I had charge of personnel matters for the Continental Oil Company in Oklahoma, as chief, personnel division. I have been continuously engaged in personnel problems since 1922 when I was employed by the Continental Oil Company. I studied personnel problems on the theoretical side for nineteen years and took special courses at Colorado College and at the Oklahoma A. & M. College, and for the last eight years at an institute at Princeton. I have spoken on the subject. I have been a member of the American Management Association for fourteen years. The Association is one of the principal management associations of the country, having a membership of three to four thousand organizations, to which both

private and Government organizations belong. I have been most active in the Personnel Division which is the principal division of the Association. I was on the program last year and dealt with the subject of training and developing personnel men.

Home Owners Loan Corporation is an independent instrumentality of the Federal Government created by an act of Congress in 1933 for the purpose of refinancing distressed home loans, with an original capital of $200,000,000, and is self-sustaining financially and no funds are appropriated. In 1937 and 1938 its funds were taken entirely out of earnings. In 1937 its total average number of employees was between 15,000 and 16,000, though its staff is decreasing as it is a liquidating organization. Of those employees in 1937 there were 1,200 to 1,400 working here in Washington. The employees of Home Owners Loan Corporation were in 1936, 1937, and 1938 subject to rules and regulations governing federal employees, hours of work, rates of pay, hours of leave, and annual leave, and regulations of that sort, of the Civil Service Commission. Fifteen days sick leave per year is allowed an employee, though that leave is cumulative. A record of the losses of the Federal Home Loan Bank Board by reason of the annual sick leave was kept track of and the costs of sick leave were interpreted to the management under my direction. I have studied this problem in private industry and most private employers keep pretty accurate records of their costs. I am familiar with studies made by the American College of Surgeons and Westinghouse. In October, November, and December of 1936, the average number of employees in Washington was 1,534, that is, exclusive of 477 who were working in the field, leaving a net number of actual employees in Washington of 1,534; as to the year 1937 the total number on the payroll for these three months was 1,768 less 428 in the field, leaving a total of 1,340, and the average for the year 1937 was 1,405 actually employed in Washington. I had occasion to consider an employee medical health plan for the employees of the Home Owners Loan Corporation in Washington. I had familiarized myself with other plans of a similar type and inspected the Stanocola Clinic, observed its operation and sought the advice of the doctors on the staff of the Stanocola Plan in Louisiana. I discussed the matter fully with other doctors there as to size, costs, services, dues, budget, physical

equipment, and results. Early in 1936 I met a Mr. R. V. Rickord, an employee of the Twentieth Century Fund or the Good Will Fund, which funds are affiliated and philanthropic foundations financed by Mr. Filene, a Boston merchant. These funds and foundations published reports and studies from time to time, with which I am familiar. I received from Mr. Rickord a pamphlet entitled "How to Budget Health," which I studied. Mr. Rickord had been in personnel work with the Brooklyn-Edison Company. Mr. Rickord and I had discussions during the year 1936 and as a result of these talks with Mr. Rickord and my trip to Stanocola and my studies in the fall of 1936, I had some conversations with the officers of the Home Owners Loan Corporation, attending about four or five to six meetings. Mr. Rickord attended some of these meetings, probably all of them. As a result of these conferences it was determined to organize a group health plan—cooperative. Mr. John Fahey is Chairman of the Federal Home Loan Bank Board. Mr. Fahey was not approached concerning this plan until the matter had been presented to the board. Mr. Luke Keeley was president of the Employees Credit Union and an employee of the HOLC. The credit union is an employees' small loan bank. Mr. Keeley came to the discussions concerning group health. He and I drafted a report to the Home Owners Loan Board on the studies that had been discussed. The plan was an employee plan.

After Group Health Association, Inc., was incorporated, I participated in the efforts to obtain a medical director. In that connection we saw Surgeon General Reynolds of the Army on March 24, 1937, who brought to our attention the name of Colonel Glenn R. Jones, a medical officer. The next day we talked with Surgeon General Rossiter of the Navy. Colonel Jones seemed an ideal man for the position of medical director as he was trained at George Washington University, taught there and later went into the Army and had been the commanding officer of the base hospital at Camp Devens, Massachusetts. We offered Colonel Jones the medical directorship. I do not know whether Group Health offered Major General Ireland the medical directorship. In April or May of 1937 we interviewed the defendant Dr. Neill in the home of John Childress, an officer of the Home Owners Loan Corporation. Dr. Neill there stated that while he was interested, he couldn't make a decision about accepting the directorship until he knew the attitude

of the District Medical Society. Dr. Neill did not become the medical director. In May, 1937, Group Health employed Dr. Brown as medical director. Dr. Brown had been employed up to that time in the Veterans' Administration and was an older man and a doctor of medicine. He finally became medical director early in June of 1937 and was paid a salary. In the summer of 1937 his first task was to develop a floor plan for the clinic, establish the clinic, determine the equipment and try to assemble a medical staff. Dr. Brown obtained as a surgeon Dr. Raymond E. Selders, but I don't remember when Dr. Brown secured the other employees of the staff.

Early in 1937 I met the defendant Dr. Woodward of the AMA when he came to my office. Dr. Woodward introduced himself as a doctor from Chicago, as a lawyer, as an employee of the AMA, and as one who had previously lived in Washington, and stated he wanted to discuss a loan from the Home Owners Loan Corporation to the Group Health. I told Dr. Woodward that the Home Owners Loan Corporation couldn't make a loan of that character to Group Health or to anybody else and had not made a loan; and I gave him a copy of the Home Owners Loan Corporation Act. Dr. Woodward then asked for a copy of the contract between Home Owners Loan Corporation and Group Health. I did not give him a copy of the contract. I did not obtain a copy of the contract for him. I told him that the contract was in the office of the Secretary of the corporation and that I couldn't supply it. Dr. Woodward said the District Medical Society was deeply concerned about the whole matter and it was going to be a subject of discussion at the Atlantic City meeting of the AMA. He said that the whole plan was going to be given a going over at that meeting.

Q. Did he say anything about what would happen to Group Health Association after this meeting of the American Medical Association?

A. He predicted that it would be the end of it.

Mr. Leahy: I object to that.

Mr. Lewin: What is the matter with that? Isn't that the substance of what he said? He predicted that it would be the end of it. How can you get it any closer?

The Court: Are those his words, in substance; I don't expect him to give the exact words.

The Witness: Yes.

The Court: That may stand.

I attended a meeting of the Executive Committee of the District Medical Society in June, 1937, on the invitation of Mr. Penniman or Dr. Brown. Mr. Penniman was president of Group Health. Dr. Conklin was present but I don't remember the names of the other persons there. The meeting was called for the purpose of explaining to the group that Group Health was about to operate; the kind of plan it was and how it intended to function. The speakers were Mr. Penniman and Dr. Brown. The members of the Executive Committee asked questions and Mr. Penniman and Dr. Brown answered those questions. The questions concerned Group Health, its organization, operation, how its doctors were going to be paid, who was going to manage it, and where its money was coming from. About a month later the representatives of the District Medical Society came and met with the Board of Trustees of Group Health. This return visit had been arranged at the earlier conference. I remember that Dr. Macatee and Dr. Groover came as representatives of the District Medical Society, but I don't remember what other doctors attended. Stenographic notes of the meeting were kept. At that meeting Group Health and its operations were discussed.

Group Health opened its clinic the first of November, 1937. After that time I attended a meeting of Mr. Penniman, Mr. Kirkpatrick, and Mr. Loomis at the office of Dr. Neill concerning Group Health. As of November 1, 1937, 84 per cent of the members of Group Health earned $4,000 or less; 58 per cent earned less than $2,000 a year.

Cross-examination by Mr. Leahy:

In 1936 and 1937 I was director of personnel of the Home Owners Loan Corporation and concerned myself with personnel duties. As to an employee in my own division, which employees numbered about 100, I had the power to hire and fire but I did not have that authority outside of my division; it rested in the chairman of the board.

Q. Well, I asked the question, probably it wasn't technically put as a director of personnel would put it, but I asked the question: Who had the authority down there to hire and fire?

To this question an objection of the Government on the ground of immateriality was sustained and an exception to this ruling was noted by the defendants.

Before you continue, I think I should correct a former statement. I had authority to recommend the discharge of an employee in my division, but the power to employ and discharge lies in the board.

The exact date when Dr. Brown was employed as medical director was in my recollection on June 5 or the 7th. I did not employ Dr. Brown personally, and cannot testify as to any contract Dr. Brown had with Group Health. Dr. Brown was first approached on this matter in May or April. I cannot testify as to the time when Dr. Brown's appointment was under consideration. The meeting with Dr. Neill was before Dr. Brown was appointed. I was called to the conference concerning Group Health because I was Director of Personnel of Home Owners Loan Corporation and had an interest in its matters and the appointment of a medical director. Mr. Childress was the assistant to Mr. Fahey. I heard Dr. Neill say that before he would consider the medical directorship he would have to know the attitude of the District Medical Society. At the meeting of the Executive Committee of the District Medical Society, I am not sure who was present, the fact that the doctors of Group Health were to be paid a salary was discussed, the equipment for the clinic was discussed, its cost, and one of the doctors made some quick calculations and said that it couldn't be done, and I said it is being done. The discussion of the amount of dues brought on the calculation and the statement of the doctor that it could not be done. The doctors requested to see the contract (between Group Health and Home Owners Loan Corporation). This request was not granted. Dr. Brown stated that a group of this sort wasn't a charitable organization and it was only the members of the Association who would receive its benefits. I attended a luncheon at the Raleigh Hotel with Mr. Penniman and Dr. McGovern, at Mr. Penniman's request, but I don't remember why the luncheon was called or what was discussed. The meeting at the headquarters of the Home Owners Loan Corporation occurred about a month after the meeting of the Executive Committee of the society and was attended by the members of the board of Group Health, Dr. Brown, some members from the society and myself. Dr. Woodward called at my

office without an appointment and after he left I made a memorandum of the meeting. On that occasion Dr. Woodward requested a copy of the contract. I told Dr. Woodward he ought to go see our medical director, Dr. Brown, who would be at the AMA Convention at Atlantic City. It was very clear from the attitude of Dr. Woodward that he was not friendly nor did he intend to be helpful to us, and he told me that he was a lawyer representing the AMA, and I suspect I was a bit guarded in my conversation. The contract was discussed frankly and freely with people who could be helpful to Group Health, that is, people interested in the business arrangements. My reason for not supplying Dr. Woodward with a copy of the contract was that I didn't have it. In response to the question of whether I thought such action was cooperating with the District Medical Society, I say that the details of the contract were not half as essential as the principles of the plan, we knew what could be done and we knew what had been done and we went ahead and did it, and it is running. The contract was not produced at the meeting between the members of the District Medical Society and the representatives of Group Health at the Home Owners Loan Corporation. After the meeting with Dr. Neill at Mr. Childress' home, Mr. Penniman, Mr. Kirkpatrick, who was Vice-President of Group Health and in the Accounting Division of Home Owners Loan Corporation, Mr. Loomis, who was the assistant to John Fahey, Chairman of the Home Loan Bank Board, and I talked with Dr. Neill at his office. At that time Dr. Neill was in a critical frame of mind toward Group Health, being opposed to the principle of prepayment. The meeting at Mr. Childress' home was for the purpose of "looking for a medical director" and not for the purpose of obtaining Dr. Neill as a surgeon.

Redirect examination:

Dr. Woodward told me that the whole subject of Group Health was to get a careful going over at the Atlantic City meeting of the AMA. The initial dues of Group Health were $2.20 a month for individual members and $3.30 a month for family members, and in return the members were to be given substantially complete medical service, including 21 days hospitalization and examination. The clinic was finally located on I Street between Thirteenth and

Fourteenth Streets. Group Health was acquiring medical equipment and apparatus during the summer under Dr. Brown.

It was stipulated that the by-laws of Group Health Association attached to Gov. Ex. 1 were all in evidence.

Recross-examination:

I did not tell Dr. Woodward that Dr. Brown would have a copy of the contract at the Atlantic City meeting.

ELSIE P. SADLER, a witness for the United States:

Direct examination.

By Mr. Kelleher:

I was employed as a clerk-stenographer with the Home Owners Loan Corporation on July 26, 1937, and was instructed to attend a meeting of the Board of Trustees of Group Health that evening by Mr. Penniman. I attended the meeting and took stenographic notes of what was said. I was assisted by Miss Roseannette Barrent. I took notes of everything and transcribed those notes and identify a transcript of the notes of the meeting of July 26, 1937, as Gov. Ex. 10.

Cross-examination.

By Mr. Leahy:

I was a secretary to Mr. Penniman's assistant at Home Owners Loan Corporation, doing stenographic work in his office. I remember I was at the meeting of July 26, 1937. Mr. Penniman instructed me to take the minutes of that meeting. I took the minutes of one other meeting after that. Miss Barrent at the same time was taking notes. Miss Barrent and I checked our notes together and made one transcript from our notes. I tried to get everything that was said at the meeting verbatim. The meeting lasted a couple of hours. I am capable of writing 120 words a minute as is Miss Barrent. We sat at the end of a long table and there were certain things said that we were not able to hear and that situation was indicated in the notes and the transcript by "and so forth, and so forth."

WILLIAM FREDERICK PENNIMAN, a witness for the United States:

Direct examination.

By Mr. Kelleher:

I am Deputy Governor of the Federal Home Loan Bank System. My home and headquarters are in Washington, D. C. In 1937 and 1938 I was the Assistant General Manager in charge of the Pacific area of the Home Owners Loan Corporation. I participated in some of the early meetings leading up to the formation of Group Health and officiated at some of those meetings. I familiarized myself with the Group Health Association plan and was one of the signers of its certificate of incorporation. I attended the first meeting of Group Health early in January, 1937, and in March, 1937, I was elected President of Group Health; Mr. R. T. Berry was elected Secretary-Treasurer and Mr. W. C. Kirkpatrick was elected Vice-President. The Surgeon General of the Army suggested Dr. Glenn I. Jones as Medical Director. I offered Dr. Jones the position of Medical Director but he did not accept. The conference with Dr. Neill at Mr. Childress' home was prior to the employment of Dr. Brown as Medical Director. At this conference Dr. Neill was told that Group Health was a group practice of medicine whereby employees would get full medical service at a monthly rate and that the doctors of Group Health were to be employed on a salary basis; that the Medical Director was to have charge of the staff and nurses on the medical side of Group Health; we went very thoroughly into this as we were anxious to have Dr. Neill as the Medical Director. Dr. Neill said he didn't see anything wrong with the setup but that his final decision would rest with the District Medical Society. Dr. Neill did not become Medical Director and the position was given to Dr. Brown early in June, 1937. I received a letter from Dr. Verbrycke, Gov. Ex. 11.

Gov. Ex. 11 was received in evidence and read to jury as follows:

"May 29, 1937.

Mr. W. F. Penniman, 1869 Wyoming Avenue, Washington, D. C.

DEAR MR. PENNIMAN:

Group Health Association, Inc., has been brought to the attention of the Medical Society of the District of Colum-

bia. The Medical Society has had a part in the formation of the present beneficent organizations such as Group Hospitalization, the Central Admitting Bureau, and the Physicians and Dentists Service Bureau, and the approval and help of the Society has been a vital factor in the success of these organizations.

May I ask, since your Association so deeply affects health problems in the city, if you will be good enough to submit a copy of your charter and by-laws, with a copy of the contract with your members?

Thanking you for your cooperation, I am,

Very truly yours, J. Russell Verbrycke, Chairman of Committee on Economics, Medical Society of the District of Columbia."

I telephoned Dr. Verbrycke about this letter and explained to him that the by-laws had been distributed to every member and that he would have no difficulty in getting a copy, that the charter was a public record and he could get that without trouble, but as to the contract I told him I was without authority to give him that. On June 24 I attended a meeting of the Executive Committee of the Medical Society with Dr. Brown and Mr. Zimmerman. I believe that Dr. Conklin presided and that the following doctors were present: Dr. J. Lawn Thompson, Dr. F. X. McGovern, Dr. William M. Sprigg, Dr. Verbrycke, Dr. R. Arthur Hooe, Dr. H. C. Macatee, Dr. Thomas E. Neill, Dr. Sterling Ruffin, and Dr. Groover, now deceased. The meeting was designed to acquaint the Medical Society with our purposes and what we were aiming to do. We wanted them to have full information concerning it; and the primary purpose was to solicit the aid of the Medical Society in helping us to get organized with the proper medical staff, et cetera. Dr. Brown, Mr. Zimmerman and I addressed the meeting and then the doctors asked some questions and we endeavored to answer them. About two weeks after the meeting Dr. Thompson visited me at my office.

In July, 1937, I received a letter from Dr. F. X. McGovern, Gov. Ex. 12.

Gov. Ex. No. 12 was received in evidence and read to jury as follows:

"July 15, 1937.

Mr. W. F. Penniman, President, Group Health Association, Inc., Home Owners' Loan Corporation, Washington, D. C.

DEAR MR. PENNIMAN:

At the recent meeting held in the Medical Society Building, when you, Mr. Zimmerman and Dr. Brown, were present and discussed with us the plans and purposes of your organization, you were kind enough to say that your board of trustees would receive a committee from the Society for further discussion on the project.

The committee of the Society having this matter in charge finds itself unready to discuss the matter intelligently with you without further explanation. I am therefore directed to request, and I do respectfully ask, that you furnish me with copies of (a) your contract with Home Owners' Loan Corporation; (b) your adopted constitution and by-laws; (c) your form or forms of application; and (d) any form of contract or agreement setting forth the service to be rendered to members and their dependents.

Thanking you, I am,

Very truly yours, F. X. McGovern, M.D., Chairman, Subcommittee of Executive Committee."

After receiving this letter I called Dr. McGovern and asked him to have lunch with me. I had lunch with Dr. McGovern at the Raleigh Hotel. I took Mr. Zimmerman with me because he had been working on the thing, studying it, and we wanted to talk to Dr. McGovern in detail about Group Health. Mr. Zimmerman and I had made this study together. I felt that having him with me, we could have a round table discussion of our plan. With reference to Dr. McGovern's request for certain documents, I told him that the charter was a public record. I told him that we could not give him the contract.

On July 26 a meeting was had between representatives of the Medical Society and Group Health. Group Health was represented by the Board of Trustees, Dr. Brown, Mr. Zimmerman and myself. The meeting was held in the board room of the Federal Home Loan Bank. The Medical Society was represented by Dr. Groover, Dr. Verbrycke, Dr. Macatee, Dr. McGovern, and Dr. Conklin. The discussion was general and was a continuation of the previous discussion. Dr. Macatee took the lead and we went into considerable detail about this type of practice. Dr. Groover spoke of the type of this practice in other countries. I took

the impression that they would like to have us carry on with the association but let their doctors do the practicing. The Medical Society suggested that Group Health arrange for membership and membership fees, act as a kind of collection agency and when members were sick the local doctors would attend them. Mrs. Sadler and Miss Barrent took notes of the meeting at my direction.

Dr. Brown was to organize a staff, arrange for equipment and assist in locating space for the clinic.

I do not know the exact procedure followed by Dr. Brown in obtaining a staff. He, being a medical man, had his own way. He did write and contacted some doctors; investigated their qualifications very thoroughly and when he arrived at the conclusion that a person contacted did have the necessary qualifications the question was brought to the board with respect to the salary to be paid the individual. Dr. Brown recommended the salaries of the staff, which were accepted by the board. The first doctor he obtained was Dr. Raymond E. Selders. Dr. Brown selected Dr. Allan E. Lee, Dr. Scandiffio and Dr. Hulbert and the nurses. Dr. Lee is engaged in the general practice of medicine. Dr. Scandiffio is a pediatrician. The Group Health Clinic opened on November 1, 1937. On the previous evening the Board of Trustees sponsored a dinner at which Dr. Richard Cabot, a prominent physician from Boston and a brother of Dr. Hugh Cabot, spoke. Several other doctors were invited, including Dr. Neill, who wrote me through his secretary that he would be unable to attend. Dr. Neill was president of the Medical Society.

Gov. Ex. No. 13 was received in evidence and read to jury as follows:

"Dr. Thomas E. Neill,
1824 Massachusetts Avenue,
Washington, D. C.

October 26, 1937.

Mr. Wm. F. Penniman, Group Health Association, Inc.,
1328 Eye Street, N. W., Washington, D. C.

MY DEAR MR. PENNIMAN:

Doctor Neill will be unable to attend the dinner at the Mayflower Hotel on October 30, 1937, and has asked me to let you know.

Very truly yours, (Signed) Mary G. Lynch, Secretary to Doctor Neill."

Invitations were sent to the superintendents of all hospitals, but Colonel Randall of the Homeopathic Hospital was the only one who attended.

After the Clinic opened, Dr. Lee and Dr. Scandiffio tendered their resignations to the Medical Society.

Late in November, 1937, I met Dr. Neill at his office. There were also present Horace Russell, a member of the Board of Trustees of Group Health, Mr. Ivan Carson, Mr. R. T. Berry, Mr. W. D. Kirkpatrick and Mr. Zimmerman. I told Dr. Neill of the incident that had occurred at the Garfield Hospital which we thought was pretty terrible; that I had come to talk with him because he was the president of the District Medical Society and we felt very definitely that he should know about this matter. I told Dr. Neill that a patient, Mary Frances Stuart, had been carried to Garfield in a serious condition; that she was the laboratician of Group Health and was found unconscious in her home. It was found that she needed an emergency operation. While she was waiting, a debate occurred in the corridor of Garfield as to whether or not any doctor could attend her and while she was in that condition a doctor made the statement that he couldn't attend her—he said that in a loud voice—if she was connected with Group Health. Dr. Lee, whose patient she was, found out that nothing had been done there, and he told the group that he was on the courtesy staff of Garfield and he entered her as his patient and she was operated on. I told Dr. Neill I thought the patient should have received better treatment because it was an emergency and time was of the essence. Dr. Neill gave us no encouragement and made the statement that the members of the Supreme Court and members of Congress, if put all in one room, couldn't competently select a doctor. I said that if that is true, how can a poor layman select the right kind of doctor. I told Dr. Neill that the doctor involved in the Mary Stuart case was Dr. Schoenfeld. I wrote a letter to Dr. Neill concerning this case and received a reply. The letter which I wrote is Gov. Ex. 13A and the reply I received is Gov. Ex. 14.

Gov. Ex. 13A was received in evidence and read to the jury as follows:

"Dr. Thomas E. Neill, President, Medical Society of the District of Columbia, 1824 Massachusetts Avenue, Washington, D. C.

DEAR DR. NEILL:

It was good of you to give so generously of your time to the representatives of the Group Health Association, when they called on you at your office on Saturday afternoon.

It has been my experience that when a group of men are gathered to discuss any subject, varying opinions as to what was said oftentimes result, notwithstanding the sincerity of all present. Wishing to avoid this in this instance, I have deemed it advisable to confirm in substance the highlights of our discussion as understood by us, as follows:

1. That the hospitals are maintained for the patient and not for the doctor, therefore, no hospital is justified in refusing admission to any patient in need of hospital care, regardless of race, color or creed, or membership in any association.

2. That there are at present some 400 doctors, licensed to practice in the District of Columbia, who are not members of the Medical Society of the District of Columbia, some of whom are on the courtesy staff of local hospitals. This confirms our opinion that membership in the District Medical Society by a licensed physician is not a condition precedent to being accepted and placed on the courtesy list of the local hospitals.

3. That consideration of the applications of duly licensed physicians applying to any of the local hospitals for courtesy privileges is based upon merit and competence of the physician making the application.

4. That to falsely charge a physician with incompetence subjects the accuser or accusers to suit for libel. This statement was made in connection with your reference to one of our doctors, but whose name you did not wish to disclose.

Dr. Raymond E. Selders' application for courtesy privileges has been submitted to several of the local hospitals.

A careful and thorough investigation of Dr. Selders' qualifications was made before his acceptance as a Member

of the Medical Staff of the Group Health Association. This included a careful review of his education, and his years of experience. We have checked his record from Texas to Massachusetts and have unqualified statements from physicians with whom he has worked, and in whose integrity we have implicit confidence.

Both as President of the Medical Society of the District of Columbia and a prominent physician of long standing in this community, it is, we think very proper that you should be thoroughly conversant with every activity, the purpose of which is to give medical care, to the end that the highest standard of ethics of the medical profession may be maintained. For this reason, we are delighted to have had this talk with you.

I also wish to confirm our understanding that what was said by you to us was in confidence and in nowise intended for purposes of publication.

Sincerely yours, (Signed) William F. Penniman, President."

Gov. Ex. 14 was received in evidence and read to jury as follows:

"The Medical Society of the District of Columbia,

Washington

November 24, 1937.

Mr. Wm. F. Penniman, President, Group Health Association Inc., 1328 I Street, N. W., Washington, D. C.

MY DEAR MR. PENNIMAN:

Thank you for your letter of November 22nd.

I was very glad to have the opportunity of putting a few facts before the group of men that came to my office with you on Saturday. I think a full understanding of what we must adhere to by you and your committee will save a great deal of unpleasantness in the future.

I shall be very glad to discuss in person with you any point, under the same conditions.

I wish to thank you and through you the rest of the men present for the very frank way they expressed their opinions.

With kind regards,

Very sincerely yours, (Signed) Thomas E. Neill."

Q. Mr. Penniman, I would like to clear up one thing about the conference with Dr. Neill. Did you tell Dr. Neill how Dr. Schoenfeld happened to get into the Mary Frances Stuart case?

Mr. Leahy: Would that be material, based wholly on hearsay? Anything he said to Dr. Neill wouldn't be admissible.

Mr. Kelleher: He went into everything this morning.

The Court: It is just a part of a conversation that is already in.

By Mr. Kelleher:

Q. Do you understand my question?

A. Yes. I told Dr. Neill Dr. Schoenfeld was the surgeon who was going to perform the operation and told him Dr. Schoenfeld was ready, but he was the one who made the statement he couldn't do it if she was connected with Group Health Association.

Q. Did you tell him who had requested Dr. Schoenfeld to operate?

A. Yes, I told him that Dr. Lee was a member of Garfield Hospital, was on the courtesy staff, and that he and the medical director had arranged for it.

Q. Did you tell Dr. Neill why Dr. Lee did not himself perform the operation?

A. Well, I presume I did, because I could very easily have said in the course of this general conversation that Dr. Lee was not a surgeon.

Q. Why didn't Dr. Selders perform the operation?

A. Dr. Selders wasn't——

The Court: The question is what the conversation was.

The Witness: I told him that Dr. Selders had not been admitted to the courtesy staff of the hospital and had gotten Dr. Schoenfeld to do it.

By Mr. Kelleher:

Q. Did you explain to Dr. Neill who Dr. Shoenfeld was?

A. Yes.

Q. What did you tell him?

A. I told him he was a member of the courtesy staff and was a member of the District Medical Society and that he had called him to perform this operation.

After Dr. Lee and Dr. Scandiffio submitted their resignations to the Medical Society they later withdrew them. I attended a hearing of the Executive Committee of the Medical Society on December 6, 1937. That was the hearing that had been given Dr. Scandiffio and Dr. Lee on charges preferred against them by the C. C. and I. M. Committee of the Medical Society, and they were given the right to this hearing before being expelled from the society. Dr. Hiram Reed served as chairman; Dr. Hooe, Dr. Neill, Dr. McGovern, Dr. Verbrycke, Dr. Macatee, Dr. Conklin and Dr. Sprigg were in attendance as well as three attorneys, Mr. Fenning, Mr. Hoover, and Mr. Leahy; Dr. Scandiffio and Dr. Lee attended, accompanied by Mr. Zimmerman, Dr. Brown, and the following attorneys: Mr. Luke Keeley, Mr. Horace Russell, Mr. E. K. Newman, and Mr. York. I also attended the adjourned session of this hearing on December 10.

Thereupon, the following questions and answers occurred over the objections and exceptions of the defendants that they were inadmissible because immaterial, irrelevant and hearsay:

Q. Mr. Penniman, did you see Dr. Allan E. Lee on the afternoon of Friday, December 10?

A. Yes.

Q. Did Dr. Allan E. Lee make a telephone call in your office?

A. Yes.

Q. Did you hear him make that call?

A. I did.

Q. Whom did he call?

A. Dr. Hooe.

Q. Is that Dr. R. Arthur Hooe?

A. That is correct.

Q. Did you attend a meeting of the Executive Committee of the District Medical Society that evening?

A. I did.

Q. When you came into the building where the meeting was being held, did you see Dr. Lee talking with anybody?

A. I saw Dr. Lee in the corridor.

Q. With whom was he talking?

A. Dr. Hooe.

Q. Did you watch Dr. Lee talking with Dr. Hooe?

A. Well, I observed it. I made no attempt to listen to what was said. I observed that the two were talking.

Q. You didn't hear the conversation?

A. No, I did not.

Q. What occurred after the conversation between Dr. Lee and Dr. Hooe?

A. Dr. Hooe went back in some little office right off the corridor, and shortly thereafter asked Dr. Lee to come to the room.

Q. Did you see Dr. Hooe come back out of the room?

A. Yes.

Q. Did he beckon Dr. Lee to come in?

A. Told Dr. Lee to come in, and he followed.

Q. After you saw Dr. Lee go into the room with Dr. Hooe what occurred?

A. He shut the door.

* * * * * * *

Q. Did the Executive Committee meeting commence after that?

A. Yes.

Q. What occurred at the start of the meeting?

A. Dr. Hooe, as I recall it, made the statement to the chairman of the Executive Committee that Dr. Allan E. Lee, having now tendered his resignation to Group Health Association, the C. C. and I. M. Committee recommended withdrawal of the charges, and I think it was put to a vote of the Executive Committee and they voted to withdraw the charges and reinstate Dr. Lee.

At the second meeting Dr. Scandiffio testified. I testified at the third meeting held the week following the second meeting. Dr. Brown also testified.

I wrote and mailed communications to the Washington hospitals concerning staff privileges for the medical staff of GHA and I received replies to these letters. These letters are marked Gov. Exs. 15-29, inclusive.

Gov. Exs. 15 and 16 were admitted in evidence subject to proof of the conspiracy.

Gov. Ex. 15 was read to the jury as follows:

"November 8, 1937.

Col. Joseph Randall, President, Board of Trustees, Homeopathic Hospital, 3146—19th Street N. W., Washington, D. C.

DEAR COL. RANDALL:

For your information, I am attaching hereto a copy of a letter addressed to the Homeopathic Hospital requesting

permission to admit patients who are members of the Group Health Association to the hospital upon the request of the Medical Director.

Also, a request to permit Dr. Raymond E. Selders, Surgeon, who is attached to the staff of the Group Health Association, to attend these patients while hospitalized.

For your further information, there is attached a record of Dr. Selders' education, training and experience.

Your assistance in obtaining prompt and favorable action will be very much appreciated.

Very truly yours, William F. Penniman, President."

Gov. Ex. 16 was read to the jury as follows:

"National Homeopathic Hospital,

Washington, D. C.

November 9, 1937.

Mr. William F. Penniman, Group Health Association, Inc., 1328 Eye Street N. W., Washington, D. C.

MY DEAR MR. PENNIMAN:

At a Board of Trustees Meeting held on November 4, 1937, it was voted that until the Group Health Association, Inc. was approved by the Medical Society of the District of Columbia, the National Homeopathic Hospital could not make any contract or enter into any agreement with it.

Very truly yours, (Signed) J. B. Gregg Custis, M. D., Executive Officer, Board of Trustees."

Gov. Exs. 17-29, inclusive, were offered in evidence. Defendants objected on the ground that no conspiracy had been shown and that they were immaterial, incompetent and irrelevant. The court reserved ruling on the admissibility. The Government reserved the right to recall Mr. Penniman.

Cross-examination.

By Mr. Leahy:

I was President of Group Health in 1937 and in 1938 was a member of the Board of Trustees, which consisted of eleven members. At that time in HOLC I held the position of Assistant General Manager in charge of the Pacific Coast Area. Mr. Zimmerman had a great deal to do with the

formation of Group Health and I kept in constant touch with reference to GHA matters; we worked together pretty closely.

The first time I saw any member of the District Medical Society concerning Group Health was when I visited at the Society's headquarters sometime after the receipt of Gov. Ex. 11. As President of Group Health I had not attempted officially or unofficially before the receipt of Gov. Ex. 11 to contact the Medical Society. In April I had interviewed Dr. Neill at Mr. Childress' home, accompanied by Mr. Horace Russell, General Counsel of HOLC, and Mr. Zimmerman. It was at Mr. Childress' suggestion that Dr. Neill met us at his home.

About 900 copies of the by laws of Group Health had been distributed to the membership shortly after February 24, 1937. I don't recall whether a copy of the by-laws was left with Dr. Neill. I don't recall that Dr. Neill asked for a copy.

After receiving Gov. Ex. 11 I called Dr. Verbrycke and talked to him; I thought that in a discussion with him over the telephone I could give him so much more information concerning the plans of operation than I could in a letter and he wanted certain things and I wanted to discuss those things with him, which I did in a telephone conversation. I knew nothing about the Central Admitting Bureau or the Physicians and Dentists Service Bureau mentioned in the letter. Group Health never submitted a copy of its charter to the Medical Society as it was a matter of public record. I did not have a copy of the charter but I had copies of the by-laws. I could have mailed him a copy. I told Dr. Verbrycke that a number of copies of the by-laws had been distributed and that he would have no difficulty obtaining one. As a matter of fact we had already heard that a number of copies were in the hands of doctors. When the meeting was had at the Medical Society, I do not remember that any copy of the by-laws was produced. No list of the members of Group Health was furnished Dr. McGovern. No copy of the contract between Group Health and HOLC was ever supplied the Medical Society. No copy of the forms of application for membership was supplied the Medical Society.

At the time of the meeting with Dr. Neill at Mr. Childress' house we would have been delighted to hire Dr. Neill upon Mr. Childress' recommendation and his reputation which was excellent. Dr. Neill did say at this occasion that

he had just been elected president of the Medical Society to take office on July 1. Dr. Neill did not say anything which indicated whether or not he would like the position. The only indication, as I can recall, was that he did not see anything particularly harmful in this organization set-up that we had described. He mentioned something of the type of service being given by the Potomac Electric Company or the Telephone Company. But before he left he did indicate that whatever he did, his final action would have to be upon the decision of the District Medical Society. When I outlined the plan it did convey the information that it was a prepayment service. There was no indication during the evening's conversation that Dr. Neill objected to the prepayment notion. Dr. Neill advised us that he was engaged in some form of contract practice with one or two organizations in the District of Columbia. To the best of my recollection there was no question at that time brought up about the legality of Group Health. I cannot recall that Dr. Neill said anything with regard to the ethical side of it. The remark that he made as he was leaving was he had to leave because of some engagement and that his further action would have to depend upon the attitude of the Medical Society. I don't remember his saying anything about legality or ethics of it. He did say that he saw nothing wrong with it, and that there were other practices such as he was interested in. We did not get in touch with him again, as we were waiting for a call from him. This visit is fixed in my mind as sometime in the spring, because we were anxious to get a medical director, to get started. We had already then taken applications for members of the Association. The formation centered around the getting of a competent medical director to start the staff and fix the clinic. We had not at that time obtained a medical director. We were looking for a medical director. We would not have selected a surgeon.

When we met with the Executive Committee of the medical society after the receipt of Gov. Ex. 11 this was the first time that anybody representing Group Health had seen an official group of the Medical Society. The general discussion was concerning just what it intended to do and how it could do what it intended. I gave the opening statement and tried to give as broad and clear an outline of the purposes of the organization as possible, expressing the desire to have the doctors in the Medical Society have the fullest

information about this. That was the purpose of coming over, to solicit their cooperation to the end that we might have an organization that would be above reproach. There was no objection to giving them the by-laws or a copy of the charter, if they did not already have it and if it were not obtainable. But so far as the contract that existed between Group Health and the Federal Home Loan Bank Board was concerned, I made it pretty clear that that was something we had no authority to give. That had to come from the Board itself. I do not recall that I advised the Board that the Medical Society would like to see a copy of the contract. We had gotten reports from several of the members that they had given copies of the by-laws to the local doctors. I could not say that any single member of the Executive Committee that night had ever had a copy of the by-laws of Group Health. Considerable discussion occurred at the meeting with the Society concerning the possibility of Group Health economically succeeding. Dr. Groover made some calculations of the dues of $2.20 per member and $3.30 per family per month and stated that the organization could not give at such a price medical service of good quality. But it has been done and it is now operating.

Q. It has not been done on dues, has it?

A. Yes.

Q. Has it, Mr. Penniman?

A. Except for the purchase of equipment.

Q. How big an exception was that?

A. $40,000.

Q. How big an exception did you make otherwise?

A. How big an exception other than dues?

Q. Yes.

A. None.

Q. Any contributions from any other association?

A. From other associations?

Q. Yes.

A. No; not that I know of.

Q. None from the Good Will Fund?

A. No.

Q. None from any other association?

A. None that I know of.

Q. Who paid the salary of the administrator from August, 1938?

A. That was beyond my time. I don't know what the contract was.

Q. You were still president, you said, until September or October, 1937?

A. Yes.

Q. I mean, until 1938.

A. Oh, no.

Q. Were you a member in 1938?

A. Yes.

Q. Were you on the board of trustees in 1938?

A. Yes.

Q. But you do not know who paid the rent on the office occupied by the administrator for Group Health?

A. After I assumed this new position——

Q. Just answer that question, please.

A. No; I don't know what the contract was.

Q. You knew you were not paying his salary.

A. I didn't pay any of the salaries.

Q. I mean, Group Health.

A. I don't know what arrangements were made. I didn't see the contract.

Q. Do you know Mr. Taylor?

A. Oh, very well.

Q. See if I understand correctly. You did know that he was the administrator of GHA?

A. Yes.

Q. You did know he had a separate office?

A. Yes.

Q. But you do not know who paid his salary or who paid the rent?

A. I would not go so far as to say that. I would not know who paid his salary. I heard that some arrangement had been made, but the details of it I could not tell you about.

Q. I am not asking for details, but just a broad answer. Who was it you heard paid his salary?

A. I don't believe I can answer, except from hearsay.

Between this meeting and the subsequent meeting had at the Home Owners Bank Board there was a great deal of agitation about Group Health and its ability to succeed and its ability to get competent doctors and its ability to do a good many things. Stenographic notes were kept of both meetings. I asked for a copy of the notes of the Medical Society and I think I have seen them. After the notes of the meeting in the board room of the Home Owners Loan Corporation were transcribed, I don't think I ever authorized my secretary, Mrs. Sadler, to furnish the Medical Society with

a copy of those notes. At the luncheon with Dr. McGovern I was accompanied by Mr. Zimmerman and I was asked by Dr. McGovern for a copy of the by-laws, a copy of the contract between the members and the Group Health, and a copy of the contract under which Group Health was to obtain funds. I told Dr. McGovern that I could not give him a copy of the contract because I did not have the authority to give it; that, if he wanted the charter, it was a matter of public record and that copies of the by-laws were generously distributed and he would have no difficulty in getting one. Dr. McGovern left the luncheon without getting the information he asked for, but with an explanation.

I went to Dr. Neill's office in November to discuss the case of a young lady who had been admitted to Garfield Hospital and operated on by Dr. Schoenfeld. Dr. Neill stated that he did not know what had occurred. The next day after the meeting I wrote a letter of what occurred there, to Dr. Neill, giving the highlights. I called Dr. Neill on the telephone and arranged the appointment. Dr. Neill stated that it was to be off the record and not official and not to be published. It was understood that the meeting was to be unofficial with no publicity whatsoever. I made a record of what transpired, placed it in a letter and sent that letter to Dr. Neill, as President of the District Medical Society but to his office and marked personal. We went to see Dr. Neill in his capacity as President of the Medical Society.

I learned the information which I gave Dr. Neill from Dr. Brown and Dr. Allan E. Lee. Dr. Lee was on the staff of Group Health. He had courtesy privileges at Garfield Hospital. I told Dr. Neill that Dr. Lee took this lady to the hospital. I told Dr. Neill that Dr. Schoenfeld said that if she is connected with Group Health, "I can't have anything to do with her." Dr. Lee was present and heard this. Dr. Lee had courtesy privileges but he is not a surgeon. Arrangements had been made for Dr. Schoenfeld to perform the operation. She was found unconscious in the morning about 7:30 A. M. on the floor of her bathroom and taken to the hospital. After these doctors said that they could not touch her if she was connected with Group Health, Dr. Lee said, "I am on the courtesy staff and I am bringing this patient in as my patient." Then the young lady was operated on that morning. We reported to Dr. Neill because she was in a critical condition and the doctors were

arguing that they could not go up if she was a member of Group Health. I never talked to Dr. Schoenfeld personally about the matter.

With reference to the resignations of Dr. Lee and Dr. Scandiffio from the Society, I had not been informed that the Society had a provision in its constitution concerning approval of contracts which any member might enter into with any group or industrial organization. We had gotten from various sources that these doctors could not be approved by the Society until it had approved Group Health. We knew that where a doctor who was a member of the Society was to render service under a contract that that contract needed to be approved by the Society. Group Health never submitted any contract with its physicians to the Medical Society for approval, but I think Drs. Lee and Scandiffio did. I think a contract was drawn up but I don't know whether Dr. Lee and Dr. Scandiffio signed such a contract. No doctor could work and receive a salary from Group Health until the Board of Trustees authorized that employment. I knew that Dr. Brown was negotiating with both Drs. Scandiffio and Lee before either of these doctors submitted their resignations to the Society. As President of Group Health, I did not request the Medical Society to approve the contracts of Drs. Scandiffio and Lee. I did submit requests for hospital privileges to the hospitals. At the meeting Dr. Macatee said that the Medical Society was in sympathy with the objective of spreading the cost of illness for individuals over a large group so that the disasters that come to family budgets might be avoided by group protection, but there was a disagreement as to the method of obtaining this objective. The main objection of the Medical Society was the fact that these doctors were working on a contract, those that were getting a salary for their services. The doctors expressed themselves as willing to go along with Group Health on some basis whereby the membership could be in the organization with the local doctors taking care of the patients as distinguished from salaried doctors on the staff of Group Health. I remember Dr. Macatee explaining that the Society found itself in an embarrassing situation growing out of the difficulty of finding acceptable contracts by which medical men might lend themselves to plans like Group Health without incurring certain infractions of the principles of medical ethics by which the doctors are bound.

Dr. Macatee told Group Health that in examining its charter the doctors were quite uncertain about the plan and would like to have information of whether or not the corporation was legal, because in many of the states of the Union the courts have found that a corporation cannot practice medicine for the reason that a corporation cannot be licensed to practice medicine, although they realize that the question had not been decided in the District of Columbia. As President of Group Health, I did not give the District Society any information concerning the legality of Group Health as there wasn't any question in our minds about it. We went into details of the operations of Stanocola and Civic Medical in Chicago and Ross-Loos in Los Angeles. Dr. Macatee informed Group Health that the constitution of the Medical Society made it mandatory upon all members that a contract to render medical service must be approved by the Medical Society in order to ascertain that its terms and objects were in accord with the principles of medical ethics. Dr. Macatee told us that the principles of medical ethics which caused him some doubt concerning Group Health dealt with the solicitation of patients directly or indirectly, underbidding to secure a contract, when the compensation is inadequate to insure good medical service, when there is interference with reasonable competition in the community, when free choice of a physician is prevented, when conditions of employment make it impossible to render adequate service to the patient, when the contract, because of any of its provisions or practices, is contrary to sound public policy.

Q. Now, did he further bring to your attention: "The other thing that has occurred to us that seventh item in the criteria for the ethical character of a contract with a corporation, and that has to do with whether it is consistent with sound public policy. We conceive ourselves to be responsible in a measure for the welfare of the citizens of the jurisdiction in which we practice and we wonder whether the plan which has been so carefully worked out for your organization, whether it will actually perform for the members who join it, just the function that you design for it. We know in our contacts a good deal about human nature; we know how people when they have trivial illnesses most any doctor who is licensed and who can be found on the corner will do, but we also know that when serious illness, when complicated and difficult cases arise, and those are the

cases which strike heavily upon the budgets of families, that nothing but the best will do."

Do you remember a discussion on that?

A. Very well.

Then Dr. Macatee asked if an epidemic broke out how Group Health would take care of its members and whether surplus funds were available for that situation. Dr. Macatee was told that in that situation Group Health would solicit the aid of the members of the Medical Society. At the same meeting Dr. Groover talked, saying that wherever clinics of this type had been organized in foreign countries, in Cuba, Germany and elsewhere, there had been a depreciation in medical services and things of that kind, I remember.

Q. Do you remember Dr. Groover saying this: "In the first place, before I say anything, let me make it plain that I have no personal interest in what this group does for the very simple reason that I have practiced medicine now some 40 (30) years and my days of practice are nearing an end in five or six years, so it doesn't make any difference to me personally what you do or what you don't do.

To some extent, that is true of some of my colleagues who are with me. I think when we boil the whole thing down we will find that the fundamental thing that concerns the medical profession and actuates it to look askance at such development as this, is the consideration as to the effect it may have on the quality of medical care, and I believe that the medical profession as a whole would be perfectly willing to waive almost any other consideration if they could be convinced that it would not tend to the deterioration of the quality of medical care. The medical profession generally believes that. Now, they may be wrong, but they are overwhelmingly of that opinion. It is difficult to convince a layman of that, I know, and perhaps to do so would be an almost futile undertaking. I will call your attention to just one thing that will give you something to think about: When I graduated in medicine in 1898, Germany was a leader in medical science, perhaps next would come France, next would come England, and somewhere way down at the bottom of the list, came the United States. We were backward. Well, now, it is at least significant that at about that time these social schemes began to be introduced into Germany first under Bismarck as a purely political movement, and later on they have spread. Now what

has happened. This is not proof, I know, but it is suggestive. Is Germany any longer the leader in medical science? No, it is not. Leadership has passed from Europe where these various social schemes have been tried out, to the good old U. S. A. Now that at least is significant and I think that while we must be coming up the scale, they have to some extent gone down. America no longer goes to Germany for its post graduate education. As a matter of fact, many Europeans are now coming to the United States for training, and I mention that one thing to indicate that the thing that concerns the doctor is how these different things are going to affect the quality of medical care in the United States and if we don't have a broad enough vision to sustain and to constantly increase the quality of medical care, your economic considerations are worse than failures and I think you should give careful consideration as to this for that is the thing in the last analysis that concerns the medical profession, as to how and what effect it is going to have on the quality of medical care. Doctors who have studied it feel that it will be bad. Maybe they are wrong, but there is certainly sufficient evidence to justify that opinion. I think that is about all I have to say."

Q. Do you remember that statement?

A. Yes, sir.

Cross-examination suspended.

Government counsel objected to this method of cross-examination stating that the document from which defense counsel was reading, marked Gov. Ex. 10, had been offered in evidence by the Government and that the court had taken it under advisement.

Gov. Ex. 10 was received in evidence and read to jury as follows:

"July 26, 1937, 8 p. m.

Mr. Penniman: Dr. McGovern tells me his committee is complete. For the benefit of the Members of our Board, let me repeat again as I did in a report that I submitted sometime ago. The committee was invited to appear before a group of the members of the Medical Society that they might learn more about the aims and objectives of this effort of ours in the Group Hospitalization. We met with the committee that was selected and a good many questions were asked and a good many answers were given. We hope

we gave the answers they wanted. We endeavored to do so. We had nothing to withhold; we put all the cards on the table and endeavored to answer every question that was asked upon which we felt they would receive any benefit. At the conclusion of this meeting and I believe, Dr. Conklin, you asked the question if our Board of Trustees would be willing to receive a committee from the Medical Society who would come over with the end in view, the idea in mind, of presenting to our Board some plan wherein the District Medical Society could cooperate or could be helpful to this group. Dr. McGovern, I believe is the Chairman of this committee. Dr. Conklin is the Secretary of the Society and of the Committee, I take it, and the purpose of this meeting is to hear these gentlemen in any plan they wish to present to this body wherein it can be worked out or some thought advanced wherein the Medical Society can be helpful to us.

Dr. McGovern: In reply to Mr. Penniman, I would like to state that we appreciate the opportunity of being here with you, and we would have been here sooner except that we were possibly lacking in some information that we thought we might have. I'm going to turn the chairmanship of my committee over to Dr. Macatee for the evening.

Dr. Macatee: Mr. Penniman, ladies and gentlemen, I should like at the outset to express our appreciation of the attendance of Mr. Penniman and his associate gentlemen of this organization at the meeting of the Medical Society sometime ago, and I would particularly like to express our appreciation of this full meeting of your Board of Trustees and others interested in the organization. In Mr. Penniman's introductory remarks this evening, he stated that we had asked for this conference with the idea that we might present some plan by which the Medical Society might be helpful to your organization. I think I may say for the Medical Society that we are in sympathy with the proposition of spreading the costs of illness to individuals over a large group so that the disasters that come to family budgets may be avoided by that group protection. We feel that if some method could be devised by which there could be accomplished economically, and I use the word 'economically' in the sense of not only doing it within the means of people of moderate income, but also from the view of keeping the project solvent, that if some such method could be worked out, it would have tremendous social value.

Now, Mr. Penniman's remarks, however, leave us somewhat in an embarrassing situation, for the reason that we are not yet in a position to know how we may cooperate helpfully to the organization. And those reasons are bound up in a number of considerations which are very clear and familiar to us as medical men, growing out of the difficulty of finding acceptable contracts by which medical men may lend themselves to plans of this sort, without incurring certain infractions of the principles of medical ethics by which we are bound. In looking over your Articles of Incorporation I find that among the objects and purposes for which this Corporation is formed are the following:

To provide without profit to the corporation for services of physicians and other medical attention of any and all kinds of medical, surgical and hospital treatment to the members hereof and their dependents, and certain other objects which are enumerated there. The first thing that occurs to us is this: that yours is a corporation which is intended to provide for the service of physicians and other medical attention of any and all kinds of medical, surgical and hospital treatment to the members.

One of the things that we are quite uncertain about and we should like to have information about, if you have it, is that in many of the states of the Union the courts have found that a corporation cannot practice medicine for the reason that a corporation cannot be licensed to practice medicine and for that reason, although we realize that in the District of Columbia that question has not arisen hitherto and there have been no judicial decisions upon it, such question might arise and the Medical Society would therefore be very uncertain what it could advise its members to do with respect to cooperation with such an organization. So far as the District of Columbia, therefore, on that ground at any rate, your organization is, in the words of Secretary Perkins, 'Its legality has not yet been determined.'

Now, then, one of the other, or at least not one of the others, but the principal difficulty that we are facing at the present time also is the knowledge that certain members of the Medical Society have already been approached with a view to serving your organization in a medical capacity. There is in the Constitution of the Medical Society of the District of Columbia a provision which is mandatory upon

all of the members of the Medical Society that contract to render medical service must be approved by the appropriate committee of the Medical Society, taking into consideration the objects of the contract, the terms of the contract, and whether those terms and objects are in accord with the principles of medical ethics. There is another provision which prohibits members of the Medical Society from lending their services to any corporation, group or individual under a contract unless the practices and purposes of the organization have been approved by the Medical Society, after due consideration of all of these objects, purposes, methods and the terms of the contract. Those things have by experience been found necessary in the orderly conduct of the affairs of the medical profession and inasmuch as the Medical Society of the District of Columbia is a component unit of the American Medical Association, in the terms of its Constitution and By-laws the members of the Medical Society are bound by the principles of ethics promulgated by the American Medical Association. Now, the principles of medical ethics lay down certain rules with respect to contract practice and by contract practice as applied to medicine is meant the carrying out of an agreement by the physician or a group of physicians as principals or agents, a corporation, a political subdivision or individual, to furnish partial or full medical services to a group or class, of service on the basis of a fee schedule or for a salary or for a fixed rate per capita. It goes on to say that contract practice per se is not unethical. However, certain conditions or features, if present, make a contract unethical; among which are:

1. When there is a solicitation of patients, directly or indirectly;

2. When there is under bidding to secure the contract;

3. When the compensation is inadequate to assure good medical service;

4. When there is interference with reasonable competition in the community;

5. When free choice of a physician is prevented;

6. When the conditions of employment make it impossible to render adequate service to the patient;

7. When the contracts, because of any of its provisions or practice, results are contrary to sound public policy.

Now, there are seven criteria which we will need to take into consideration when it comes to the participation by any of the members of the Medical Society in a contract with your organization or any similar one. The saying would hold true in indirect participation growing out of quite possible and as we see it, quite likely necessity for consultation in the operation of your plan, and, thirdly, at least until you reach a time when you can control the situation by maintaining your own hospital, by the necessary contacts in the local hospitals, for your hospitalization would have to be cared for. I think it might be well for you lay gentlemen to know that the Medical Society of the District of Columbia, being a component unit of the American Medical Association; that the American Medical Association has a membership now of about 106,000 physicians out of the approximately 160,000 physicians who are qualified to practice medicine in the United States. That, of course, in itself narrows the field very materially when it is considered that among the 60,000 must be reckoned the retired, the inactive, those who by reason of some official connection are not in active practice of medicine, and therefore the system of ethics which is mandatory upon all of these practitioners must receive our careful consideration before we can approve contracts or medical cooperation with the corporation. Once we have been assured that the corporation itself is under the law capable of practicing medicine. All of these things, Mr. Penniman, together with certain other considerations which our committee thought it might be well to bring to your attention, have led us to feel that the time is premature for us to be able to suggest or present some form of useful cooperation until we have assured ourselves of these points.

The other thing that has occurred to us, sir, is that seventh item in the criteria for the ethical character of a contract with a corporation, and that has to do with whether it is consistent with sound public policy. We conceive ourselves to be responsible in a measure for the welfare of the citizens of the jurisdiction in which we practice and we wonder whether the plan which has been so carefully worked out for your organization, whether it will actually perform for the members who join it, just the function that you de-

sign for it. We know in our contacts a good deal about human nature; we know how people when they have trivial illnesses most any doctor who is licensed and who can be found on the corner will do, but we also know that when serious illness, when complicated and difficult cases arise, and those are the cases which strike heavily upon the budgets of families, that nothing but the best will do. I think each of you may ask himself what he would do under circumstances of that sort. It is true that you might say to yourselves 'I have paid my dues in this organization and I have paid my dues because I wanted to escape the great burden that comes from the great (grave)' danger, and complicated situation, but I am looking over the personnel of our staff and my neighbor tells me that somebody else knows a great deal more about this situation; somewhere else I can get the service that is needed to save this desperate situation,' and under those circumstances we feel your members are likely to do what everybody else will; they say 'To hell with expense, I'm going to get the best. I don't care where I get it', and when that begins as it is almost sure to begin in any large group very soon, then we begin to wonder whether you are going to be able to do for your people what you project to do, and whether to that extent the project is of good sound public policy. One constructive thought has come out of our thinking about this and that is that the principle of dividing the cost of illness among many people to spare the resources of the person sorely stricken is an admirable one and one we would like very much to see succeed. But if your organization could in some way convert itself into a financial organization so that the resources of the group can be available for all of your members when these catastrophic situations arise and if the very serious objection to any proposition of this sort should arise, namely, the tendency of human beings, when they can get all the medical attention they want and are entitled to it by money already paid, to want more and more and more, much more than is necessary and often very much more than is good for them, whether that may not swamp your organization when it comes to practical operation and whether if you converted it into a purely financial proposition, whether that tendency might not recur by writing your contracts in such way that in the course of an illness the corporation would be re-

sponsible for, say, 75% of the cost. I make that proposition just for discussion—so that the item of self-interest will come in and your members would take heed as to how much they would become responsible for the 25%. I think that is as far as we can go as to practical and helpful suggestions at the present time and having stated these difficulties that we see before us, when it comes to advising our members, and many of them have already asked our advice and we have been unable to advise them, if they can be successfully answered, then I think our meeting will have been very helpful.

Mr. Penniman: Thank you, doctor.

Dr. MacAtee: I wonder if some of the members of the committee have some questions to ask or suggestions to make for the benefit of this Board of Trustees. Some of the things I have said may need elaboration. Dr. Groover, do you think of anything I have omitted, that ought to be said?

Dr. Groover: I don't know, Dr. MacAtee, of anything you have omitted—perhaps one or two things that might be emphasized or clarified. In the first place, before I say anything, let me make it plain that I have no personal interest in what this group does for the very simple reason that I have practiced medicine now some 40 (30) years and my days of practice are nearing an end in five years or six years, so it doesn't make any difference to me personally what you do or what you don't do. To some extent, that is true of some of my colleagues who are with me. I think when we boil the whole thing down we will find that the fundamental thing that concerns the medical profession and actuates it to look askance at such developments as this, is the consideration as to the effect it may have on the quality of medical care, and I believe that the medical profession as a whole would be perfectly willing to waive almost any other consideration if they could be convinced that it would not tend to the deterioration of the quality of medical care. The medical profession generally believes that. Now, they may be wrong, but they are overwhelmingly of that opinion. It is difficult to convince a layman of that, I know, and perhaps to do so would be an almost futile undertaking. I will call your attention to just one thing that will give you something to think about: When I graduated in medicine in 1898, Germany was a leader in medical science, perhaps next would come France,

next would come England, and somewhere way down at the bottom of the list, came the United States. We were backward. Well, now, it is at least significant that at about that time these social schemes began to be introduced into Germany first under Bismarck as a purely political movement, and later on they have spread. Now what has happened. This is not proof, I know, but it is suggestive. Is Germany any longer the leader in medical science? No, it is not. Is France? No, it is not. Is England? No, it is not. Leadership has passed from Europe where these various social schemes have been tried out, to the good old U. S. A. Now that at least is significant and I think that while we must be coming up the scale, they have to some extent gone down. America no longer goes to Germany for its post graduate education. As a matter of fact, many Europeans are now coming to the United States for training, and I mention that one thing to indicate that the thing that concerns the doctor is how these different things are going to affect the quality of medical care in the United States and if we don't have a broad enough vision to sustain and to constantly increase the quality of medical care, your economic considerations are worse than failures and I think you should give careful consideration as to this for that is the thing in the last analysis that concerns the medical profession, as to how and what effect it is going to have on the quality of medical care. Doctors who have studied it feel that it will be bad. Maybe they are wrong, but there is certainly sufficient evidence to justify that opinion. I think that is about all I have to say.

Dr. Verbrycke: Mr. Penniman, ladies and gentlemen, I hadn't intended to say anything, but I think there are several points. First, most of you are laymen and I think perhaps we might bring out a little about what medical ethics are. The system of ethics was not devised for the protection of the doctor or his interests, but in every case from the time of Hippocrates down, has been made for the good of the patient. I think that you will know, that you will realize in the long run the doctor is not selfish by reason of our emphasizing two points: First, if a doctor ever invents some wonderful discovery of some sort, he is not allowed by medical ethics to patent it, it goes for the good of humanity, and, second, the doctor is unceasingly developing preventive measures, which takes money right out of his own pocket. We now have the tests for Scarlet

Fever, Diphtheria, etc. where they can be prevented. I think those two examples will show that we are not speaking from a selfish standpoint, but we do have the good of the patient at heart. I am sure that all of us appreciate the high ideals and aims of this organization, and we are heartily with you in that. The only thing is the method of achieving that and I don't think there is such a very big difference between what the doctors can agree to and what you wish. I think there are just two small points but that the first and main consideration lies more upon the sixth one of those principles of medical ethics, I think it is the sixth, and that is that the patient should have always a free choice of physicians. Now to bring that down to a practice, to your own group from a practical standpoint, I have no doubt that you can get good doctors on your staff as full time salaried doctors. You can't have the best. There are two or three reasons why you can't have the best. One, there is no such thing as the best in a broad classification. In other words, we may have fifty good Ear, Eye, Nose and Throat Specialists in Washington and maybe only one or two who are capable of taking an open safety pin out of a lung. We may have an excellent surgeon when it comes to certain things like Thyroid operations. He may be way below the best when it comes to ——. There can't be any best. Medicine is so specialized that certain men stand out in one little tiny thing, perhaps in which they are best.

In the second place, because unless an organization has free choice of physicians the best doctor is not permitted. All members of the American Medical Association are not permitted to have a part with it. Now, doctors are very jealous of the privilege of belonging to the American Medical Association because practically all good doctors in the United States are members and they wouldn't give up the prestige to accept a salaried position if they knew it meant the likelihood of their not being able longer to continue their membership in the American Medical Association, and it is mandatory and absolutely compulsory upon us. Unless the American Medical Association would see fit to change them, no member of our Society could have anything to do with an organization which would not permit free choice of physicians.

From another standpoint the income of good doctors is higher than any salary you could afford to give. That is

not accomplished by big fees. You aim to spread the cost of medical fees over many. The doctors in the higher income brackets spread many fees over many patients, but the best doctor would not accept a salaried position for anything you could possibly pay.

That brings you down to two practical points. I see no reason why your organization should not instead of having salaried—I am speaking personally now, not for the Medical Society. I see no reason why you couldn't have free choice of physicians, that is having every member of the Medical Society who would agree to live up to certain fee tables, to have the choice of being chosen by the patients, to have only one salaried man in your organization, the Director, who would serve not in a medical capacity, but in an administrative capacity entirely, and that sort of proposition would entail something such as Doctor Macatee suggested, whereby the patients pay a little bit of the cost. Of course, the Medical Director would have to have a certain amount of supervision as where any patient was running up too large a bill, or if there were some unscrupulous doctor running bills up too large but with those two things in mind, I feel pretty certain that the Medical Society and this organization could get together and be very helpful to each other; so I want to leave, from my standpoint, that one thought, to see whether instead of having salaried personnel, you couldn't find it possible to allow the patient the free choice of physicians, which is the big stumbling block as far as the doctors are concerned.

Mr. Russell: Expresses appreciation for the doctors coming here.

Mr. Loomis: I would like to inquire whether the committee has given consideration to the fact that there are other group associations in existence whose history over a period of time and through a fairly large clientele has been highly commendable and helpful and whether that fact, taken with the fact that in our own organization we are a voluntary association operating through the corporation patterning our work after the successful operation of a very large number of these group associations; whether that has been taken into account and the success of those organizations recognized, or whether you have given consideration to the development of those associations, that have done such capable work, that other associations are steadily growing up, of which ours is not a direct pattern, but

certainly taking a leaf out of their experience and being carefully developed along lines which are not new to us or new in the field, but have proven over a sufficiently long time useful service to groups similar to ours. Has the committee given consideration to that?

Dr. Macatee: I might say that the committee has given consideration to these groups which have grown up throughout the country, the most notable of which is the Endicott-Johnson Corporation in New York. There are others, however, and we have felt that there were conditions surrounding those groups and organizations which set them aside particularly as specially favorably placed to succeed. We notice in your Articles of Incorporation that, what shall I say, that the benefits of your purpose is available for any employee of the Federal Government wherever he may be placed unless his employment happens to be in the Army or Navy where medical care is part of his emoluments; and we have felt that we should have to be very slow before we gave our endorsement to a matter of this sort because we must recognize that; potentially at any rate, this organization by virtue of its Articles of Incorporation, might involve about one-third of the population of the District of Columbia, and, therefore, the question of public policy and its effect upon the general medical care of the whole community would have to have our careful consideration for the reason that, suppose this organization should achieve at least the theoretical possibility, that would leave the care of the rest of the population of the District of Columbia in the hands of the medical profession as it exists, with the total obligation for the indigent, the unemployed, the dispensary and staff work of the hospitals, and leaving the very large colored population to the colored profession in whose hands that practice largely rests, that, of course, would have a profound effect upon the whole public economy of the District of Columbia and we would need to give careful consideration of it.

Mr. Russell: (Raised the question, as the doctor had said, if we get real sick, would we not go looking for an outside doctor.)

Dr. Macatee: You will, and I think it will wreck your organization.

Mr. Kirkpatrick: You mentioned in the opening part of your remarks, I understood you to say that, you started

from the premise that this corporation started to practice medicine. One of the purposes of this organization is to provide medical attention for those who——

Dr. Macatee: May I interrupt to say that I did not state that as a premise, but as one of the things we would have to examine carefully before we can give approval and advice (cooperation) to the corporation.

Mr. Russell: We expect to avoid that situation.

Mr. Kirkpatrick: One of the purposes of this organization is to provide medical attention for those who don't receive it because they can't afford it.

Dr. Macatee: I would say I don't know that that would enter into the situation if it came to the question of judicial interpretation whether it is a corporation practicing medicine, or not, I don't know; I am not a lawyer, but I would say I don't believe that question would arise. It would arise entirely from the fact that a corporation is in fact a person and a person must be licensed, and it would depend upon whether the corporation is entitled to practice medicine. The Medical Society takes an entirely different view of the situation for the reason there is no, in our opinion, there is no person in the District of Columbia, Federal employee or otherwise, who can't get medical attention when he needs it, and if he has no money and no prospects of having money, he can get it under municipal auspices. If he is short of money and by reason of illness is unable to pay in cash, the cost of his medical care, the medical and dental professions have already set up a mechanism by which he may budget the cost of his care over a period of five, six, seven, eight or nine months, the cost of which is defrayed by the doctor, dentist or hospital involved.

Mr. Kirkpatrick: The cost would be on a higher scale than we could provide the same service for.

Dr. Macatee: I think you will find that the scale of fee for people in that level will always be scaled down to their level. When it becomes necessary for them to apply to * * *. I am speaking by and large and not with reference to an occasional fee. When a doctor by bad judgment or by * * * occasionally may oppress someone, but when a patient is in an economic level where he has to apply for relief of that sort, the scale of costs immediately goes down to his own level. Of course, if he can't meet the cost on a reasonable basis of compensation for services ren-

dered, then the resources of the Community Chest come into play on his behalf and he may receive his services gratuitously and at the hands of the medical profession who compose those staffs entirely gratuitously. I want to bring out for the benefit of all the laymen present, because there is a singular lack of information on that point, that the staffs of the hospitals who attend any patient in the wards of the hospitals who receive any help from the Community Chest, do so without any compensation from the patient or from the institution.

Dr. Groover: May I say something regarding one or two points that have been raised. Doctors generally extend unlimited credit; they are the only group of people in the country that I know of who do extend unlimited credit. Anybody can come into my office tomorrow, it has been so and I am sure it is so with all of these doctors here; their credit rating is never looked up before we treat them. We treat them first and do the best we can for them, and the question of getting paid for it is the last thing that is considered. Now, a business man would consider that rotten, and maybe it is. We know perfectly well that doing business on that basis results in a very considerable loss and we know perfectly well from experience, for instance, under the Workmen's Compensation, which by the way we don't consider approved, but we practice under the Workmen's Compensation. We know by experience we can attend groups of individuals where we know there will be no loss in collections, about 25% cheaper than we can under the present scheme. Is that clear? The medical profession extends unlimited credit and for that reason there is necessarily a large loss in collection. They never ask the patients who may come in the office * * *, but few of them I dare say are wise enough to know better. I should say at least 90% of the doctors practicing in the District of Columbia do. If you go into his office or send for him to go to your home to see you, he will not raise the question of money. He will do what he can for you and run the risk of getting paid when he can. It is true that under such a system, good or bad, there is a considerable loss in collections. Certainly doctors can't get it when the patients haven't got it. That is obvious. He might as well stop trying. I have stacks of hundreds of files in my office now, and it is perfectly true that if we deal with a group, making a bargain with a group, we can do it about 25% cheaper.

Mr. Zimmerman: Is it true that about 60% of doctors' accounts are collectible? The national average about 40% of their accounts are never paid?

Dr. Groover: I presume there is some evidence on that point, but I don't know and I doubt if there are any very accurate figures on it. It varies so in different types of practice. I will give you something in my own experience if that will be helpful. Our losses are about 25%. Strange as it may seem, most of those losses are * * * because they deal with a different type of individuals and I think we are perhaps slightly high.

Mr. Zimmerman: Doctor, do you feel—I am wondering if you feel that a cooperative arrangement to make certain that the doctors will be paid for what they do, thereby stabilizing the income of the doctors who do the work, if that would be desirable to the medical profession. Etc. Etc.

Dr. Groover: I think it would be exceedingly unfortunate to stabilize the income of the medical profession, because there is just as much difference in the qualifications of doctors as there is in the qualifications of stenographers. Some of them can do it and some of them are rotten. * * * I may pay one stenographer $200 a month. I actually have another who isn't worth $50. * * * It would be unfortunate to stabilize the pay of doctors.

Mr. Kirkpatrick: Dr. Macatee, I think you stated that group practice in foreign countries has tended to deteriorate the quality of medical (?). Is there any evidence in this country so far as it has gone.

Dr. Groover: I should say none, for really it hasn't gone very far.

Dr. Verbrycke: The most successful, apparently, project of the kind is a privately owned concern, the * * *. Of course, all of the different cooperatives vary a little bit. The Endicott-Johnson is an industrial concern. There are a few which have been sponsored by doctors out in the far west, in Washington and Oregon. One sponsored by the Medical Society of — County, Georgia. They are apparently having good results, except that they are having troubles with their finances. Their bills are behind and they have not been able to keep up.

Mr. Russell: How old is that?

Dr. Verbrycke: That's about a year or a year and a half old. They are so few and they are so different, we don't

have a great deal to go on. I would like to ask Mr. Zimmerman, 'Did you not mean by stabilizing the doctors' income not so much putting it on a fixed basis as eliminating the loss, stabilizing more than equalizing, and that meant, I think, on Dr. Groover's assertion that we could practice medicine at a 25% less cost than we do if we were assured of our income. There is no question but that we could do that. There is no question but that the members of the Medical Society would probably be for such an organization if the patient had free choice of physicians.

Mr. Zimmerman: We would like to look on this arrangement as an arrangement which provides through cooperation the possibility of a method of payment and from what you have said this evening I sense that you are in sympathy with that aspect. I am interested in what you say about the free choice of doctors. I think it would be helpful if we explore that a little further together. Do you have the notion, tell me, that with a group of employees whose incomes average—that is, 60% of the incomes are $1800 or less, who must provide shelter, clothing, food, school books and * * * that families have to purchase, do you have any notion that that group of people have a free choice of doctors now in our present arrangement?

Dr. Verbrycke: Emphatically, I do * * * and they could do even better if losses were cut out.

Mr. Zimmerman: I don't think they have a free choice of doctors.

Dr. Verbrycke: I doubt if the patients who come to me have average incomes of over $1800, and I am supposed to be a doctor in the higher brackets.

Dr. Groover: Same here.

Mr. Russell: The average income in Washington is $1500 to $——.

Dr. Macatee: I would like to ask Mr. Zimmerman * * * whether he means by that an income of $1800 per year automatically limits people with such an income in their choice of physician to the poorer class of physician. Is that what you mean?

Mr. Zimmerman: My point is that most of these people have no financial reserve, have no savings and can't afford to have the annual periodic physical examination and for that reason they only employ the services of a doctor when they are in trouble, sick and think they are going to die, and they are going to have to select their doctor from the

group for whose services they can pay. I don't think they have a free choice of doctors in the sense that you gentlemen have been discussing it tonight.

Dr. Conklin: I would like to say for the information of the ladies and gentlemen present that the Medical Society of the District of Columbia took cognizance of the rather desperate situation that most everybody was in, including the physicians themselves; the financial outlook was not good. In the midst of that the Medical Dental Service scheme was worked out. I believe that most of you are familiar with it. We have certainly tried to publicize it. It means that the whole fee and the whole expense may be definitely budgeted; the doctor's fee, the hospital fee, the laboratory fee, that is money that would go to —, would all be lumped right in one sum and that is collected through this Medical Dental Service Bureau at 8th and I. 10% is retained to maintain the overhead and we may say that the Medical Dental Service Bureau has just gotten by financially, and that is all we expected it to do. We have taken care of a great number of people and I am sure that Mr. Zimmerman's question can be answered right now by saying that if we will take Jones down here on Section Street, wanting to have his tonsils taken out, and he picked one of our Nose and Throat men who has a large practice. He would go down to the Medical Dental Service Bureau and say 'I want Dr. — to take my tonsils out. I haven't but so much income. Right down there a man by the name of Trainor takes out a pencil and paper and finds out what his income is, how it is budgeted, how much goes for clothing, shelter, etc. He finds that the man has left about $5.00 or $10.00 which he might possibly put on a medical bill. This has actually happened. It is not theoretical or hypothetical. They say I don't see how I am going to do it. He charges $75.00 or $50.00 to take tonsils out and this is all I have. That bureau has called up doctors innumerable times and says here is someone who wants his tonsils out. We have gone over his income and he can't possibly pay more than $35.00 to take his tonsils out. Will you accept it? Those cases have been accepted and they have been accepted by outstanding Nose and Throat men. The same thing has been done for appendectomy. Those fees have been adjusted.

Now, then, furthermore, I would like to say there was a great number of people that were unable to pay, certainly unable to pay $3.00 for a house visit, they might possibly

pay $1.00 for a house visit. They might possibly pay $25.00 for a obstetrical situation. I believe I was really proud of the local medical profession and its reaction to the attempt to get a panel of doctors who would be willing to accept $1.00 for a house call, $25.00 for an obstetrical case and other fees in proportion. We have that list in the Medical Society Office; on that list are men who you would be actually surprised to see there; obstetricians who would be willing to go out and take cases for $25.00. The names are there. They signed up. We had this panel. The only requirement—they would have to be certified by the Medical Dental Service Bureau as being unable to pay more than $25.00 for an obstetrical and $25.00 for appendectomy and I think that very well answers what Mr. Zimmerman had in mind, certainly as far as the effort made by the local medical profession, to take care of those individuals who would not have sufficient funds.

As far as the periodic health examination is concerned, you may or may not remember: In about 1930 the American Medical Association started its insistence that more periodic health examinations be made. The slogan was established 'Get a physical examination on your birthday annually' not one single word was said about how much to pay for this examination. The thing was to have the physical examinations. I want to say that we had public meetings; the Medical Society of the District of Columbia sent speakers to various organizations to sell this idea and I also want to add most emphatically that these annual physical examinations brought the doctor from zero up to $10.00 say, and I am just as sure as I sit here, that if these individuals about whom you are speaking had the idea sold to them about a physical examination, they could go out tomorrow to get those physical examinations without the necessity of putting any money down. I believe it is more the lack of willingness on the part of the individual or lack of knowledge that those things haven't been done more; that is one of the main things. They are going to take care of the individual while he is well. I just believe that sort of thing can be taken care of and I believe that this Medical Dental Service Bureau has answered many of the economic problems as far as medicine is concerned. If any of you haven't been down there, I would suggest that you just drop in and say you have an income of $1800 and that you want to

have an appendectomy by a * * * surgeon. Go down there and find out what happens to satisfy yourself.

Dr. Groover: I want to say one more word, in regard to periodic examinations. I think the reason that periodic examinations are sought after is that the American Medical Association had given such a boost and because the doctor can't realize * * * If we except the care of infants and pregnant women, the periodic examination of infants and pregnant women, the ordinary physical examination that one would get once a year at a doctor's office is worth very, very little. I know that don't sound right, but it is true. I could have all of my colleagues here examine you tonight and what they can find out by the ordinary physical examination is really very little, and they can't accomplish much; and for that I think the doctor is to blame for putting so much emphasis on its importance. It does have considerable value in the periodic examination of infants and pregnant women and I think, the slogan about 'consult your dentist twice a year' is all right, take it by and large, the periodic examination by this group of people would be worthless. Am I right?

Dr. Macatee: No, sir, you are not. It is true that anyone of this group might come into my office and have a thorough physical examination and might go home and drop dead. That is based on the fact that you might have coronary sclerosis, which simply means you have hardening of the arteries, and that to the internist is without physical signs. I think I will be able to tell you, however, that there are some indications that you are having some sporadic changes and your pace of life ought to be modulated, and that is a good deal. To answer Mr. Zimmerman's question practically, anybody with any income, unless he had to spend 100% of his income for the actual necessities of life, in which case he — medically indigent so far as our experience is concerned, and we would find it necessary, unless we simply gave what they required, we would refer them to a clinic where some other doctor or perhaps ourselves, would do it in the setting of a clinic where we knew we were working gratuitously, in such hours as we set aside for that purpose. From the practical point of view, anybody can get a physical examination, and that requires a careful history taken if he is a new patient, that takes time, and then it requires the careful going over of the patient himself, and then it requires the doctor going back into his laboratory for the examination

of the blood and urine, and what not. Altogether, if a man is careful and really wants the physical examination to amount to anything, it is going to consume about an hour of his time. If it doesn't require an hour of his time, it is going to require the services of his secretary, which, of course, is going to enter into the cost of the thing. If we take about $10.00 as the cost anybody getting $1800 or $1400 in the Government can, I think, in 95% of the doctors' offices in this city, get the thing done and pay for it $1.00 a pay day.

Dr. Brown: I think the greatest value of the periodic checkup is the early diagnosis and the——

Dr. Macatee: * * *

Dr. Brown: Therefore, it comes in that preventive field. Another thing I want to ask * * * the statement was made that a deterioration of the medical practice has resulted * * * of clinics. Have any of you gentlemen investigated the results of the Endicott Johnson * * * or any of the large clinics? * * * an improvement and a better practice of medicine because of the availability of every * * * means or any consultation——

Dr. Macatee: I would say that the statement was made as to the deterioration as to the general practice of medicine in a nation. It would depend upon the universality of the application of the practice in a case of that sort. Any cooperatives or groups in the United States have touched such a very small * * * of the population of the country that it has not affected the general status of the * * *. But let us get down to cases and consider what would happen in the District of Columbia provided you were able to obtain the maximum of enrollment in this corporation. As I pointed out a while ago, it would involve about one-third of the population of the District of Columbia. Well, one-sixth anyhow, of actual subscriptions, because there are about 100,000 employees. Multiply that by 3.3, you see what it would do here as an economic thing. * * * It would simply result in the necessary exodus of a large part of the medical profession of the District of Columbia, except those of us who have been in practice 30 or 40 years and are about to go on the shelf anyhow. It would result in the * * * of the new blood, which is necessary to keep up that end of it. It is impossible in the spur of competition in which medical men are by reason of economic force required to keep themselves abreast of the times and a little ahead, if they are going to get anywhere and in addition to

that I would like to call your attention to the fact that we are all in accord with the idea that if people can lump their resources and those who are fortunate, their money goes to those who are unfortunate, that is all right, but you must remember that the medical profession recruits itself. It educates itself, it enlarges its capacity of itself and it is done by the social underwriting of the sum of medical fees that the whole population pay so that any social arrangement by which that underwriting is so manipulated that free competition, the free choice of physicians is limited, then you wreck the works. Now that will happen just in proportion as a social experiment involves large and larger blocks of the * * *.

Dr. Brown: * * *

Mr. Penniman: * * *

Mr. Loomis: It seems to me that these gentlemen representing the Medical Society of the District of Columbia have the very genuine concern and apprehension about the effect of the operation of this voluntary organization in this area, a concern which we want to recognize honestly and deal with sympathetically. The point raised by Dr. Macatee that such a large element of this corporation reaches the nth degree, that a large proportion of the doctors in the District will be driven out of business, seems to me to be easily answered, that as we grow to that size, if we ever do, we will absorb the physicians here in the District, presumably very much like the * * * that we contemplate for our present organization and that if that number of physicians is needed in this area, and are now making a living, that number would continue to be employed and continue to make a living on an * * * basis of employment and income and because I recognize the serious concern of the group here reflected, I have no doubt but * * * runs through the profession in the District. I would like to ask a representative of this group whether it would not be agreeable to the committee and their associates to let this program of ours which is equally serious and built upon the same principles which they hold in their medical fraternity of ethical service, to our associates in this membership, if they wouldn't and can't very properly defer any decision or endorsement of this group until we have lived along a while and they have an opportunity to judge us, not from a standpoint of what any other group has done, but from the standpoint of how we operate here.

I assume, although I don't know, and haven't asked, that the Medical Society has not endorsed any considerable number of the other group associations and they are continuing to perform a very satisfactory service. I don't know and would seriously question until informed whether the American Medical Association has endorsed the Endicott-Johnson plan or whether they have endorsed any of these other plans and if that is a fact, can't they realize that we are just as seriously interested in doing the right thing by the medical group as they would do for us, simply delay any decision or any expression of point of view until we have operated, we being free all the time to consult them they being free all the time to consult us, working together cooperatively, each recognizing the others ability and honesty, working it out together on a plan satisfactory to this group here.

Dr. Brown: The question was stated that Germany has lost her place in the sun and her power to impart knowledge. I would like to ask you if the Hitler regime in Germany has not been responsible. After the war these things have changed in Germany, Vienna, Paris and London, and since the war all of that has been lost to the United States, *who* has been much more progressive, *who* has had more means and more funds to proceed along these lines.

• • • • • • • •

Dr. Groover: I think about Germany, there are many factors, but it is merely an implication • • •

Dr. Brown: As a matter of fact, our investigation and my own investigation of these clinics—we find that better medicine is practiced than was practiced before in the same locality. I think that can be borne out also by the District.

Dr. Macatee: Mr. Loomis made some statements to which I would like to reply, that the economic aspect of this project—I had not intended to touch upon it at all. It is not at present a matter that had received very much consideration but the discussion grew out of other things that had been said and if the corporation did succeed to the nth degree and if all of the other factors which I adverted to when I first spoke were ironed out, then of course the services of the organization would have to be conducted by the medical profession, because that is the • • • of the service, and they would be recruited from somewhere, presumably to the extent that they • • • from the

District of Columbia, but the difficulty at present that we came to discuss with you and advance was the * * * we were unable to bring some concrete plan of cooperation and that we are unable to see how certain of these principles of ethics by which we are bound can be adjusted so that we will be able to cooperate in some way and to get such information as we could so that we will be able to advise our membership what their attitude should be.

Mr. Penniman: Gentlemen, speaking in behalf of the Board of Trustees of this organization, I want to express to you gentlemen our very sincere appreciation of the courtesy of this visit, your remarks and your contribution to this meeting and to give you our assurance that everything that you have had to say here this evening will be given very careful consideration. We thank you for coming up and we hope that we may have the opportunity of seeing much more of you."

Cross-examination resumed:

Dr. Brown reported to the Board that he was in negotiations with Dr. Scandiffio and Dr. Lee about salaries two months after this meeting. Doctors Scandiffio and Lee tendered their resignations to the Medical Society. I informed the Board of Trustees of Group Health of this situation. After the resignations were tendered, the Board of Group Health consulted Mr. Newman, a member of the legal staff of HOLC, Mr. Russell, General Counsel of the HOLC; Mr. York, a member of the legal staff of HOLC; and Mr. Keeley, a member of the staff of HOLC. I advised with Drs. Lee and Scandiffio and told them to withdraw their resignations because this was necessary in order for them to keep their hospital privileges. I knew that at the time Drs. Scandiffio and Lee had tendered their resignations, they could no longer remain members and continue to violate the rules of the Medical Society at the same time. After the resignations were withdrawn, a charge was made against the doctors that resulted in a hearing. At that hearing Dr. Scandiffio was represented by four members of the legal staff of HOLC and there was a battery of attorneys for the Medical Society. Evidence was offered on both sides. No person connected with Group Health or the Medical Society ever made application to the Home Owners Loan Bank Board for authority to produce the contract.

At the hearing, I guess the contract was produced under the authority of the General Counsel of the HOLC.

I never had any doubt about the legality of Group Health nor did the attorneys for Group Health.

Q. Did there come a time when you changed your views?

A. After we found out there was a good deal of action directed against Group Health, we decided there would be a test.

Q. Did your own board of trustees change their views about the legality of G. H. A.?

A. No. Change their views about the legality, its legality?

Q. Yes.

A. No.

Q. You knew Mr. Russell pretty well?

A. Yes.

Q. He, as counsel, came in frequent contact with you?

A. He was a member of the board of trustees; not as counsel.

Q. Did you never discuss with Mr. Russell, after Dr. Macatee had brought the attention of the group to the question of the legality of Group Health Association, after he had brought the attention of the board to that in July, as to whether or not its by-laws should be revamped?

A. No, I didn't discuss that; I recall that that was suggested to the board of trustees and, I think, by Mr. Russell.

* * * * * * *

Q. I ask you, Mr. Penniman, if the statement which Dr. Macatee made to you that night, on July 26, didn't cause you as a member of the board of trustees, through your counsel, Mr. Russell, to begin an investigation into the legal setup of the G. H. A., as it then stood?

A. I don't think so, just from the way you put it. I think Mr. Russell perhaps, investigating the by-laws, suggested certain changes which he thought should be made, and I think the board of trustees, relying on his judgment, agreed that they be made.

Q. Why was the change in the by-laws suggested?

A. I don't think it was suggested.

Q. I will show you something to refresh your recollection; take a peek at that. Doesn't that refresh your recollection? (Handing witness Item 1—Def. Ex. 48.)

A. Yes.

Q. Now, then, is it not a fact, having read that letter of Mr. Russell's, that you know that the legality of G. H. A., as to whether it was conducting an insurance company business at that time, was seriously in question, even among yourselves, forgetting the medical profession?

. . . . . .

The Witness: I think there had been a great deal said about the question of legality. I had heard it and seen it in the papers. There was a great deal of discussion. My recollection is that Mr. Russell, as we progressed, as we went along, as our legal advisor made recommendations for such changes as he thought would be beneficial to the organization, presented them to the board, and the board agreed with him and followed his recommendations.

. . . . . .

Q. The motive was to strengthen the legal position of G. H. A., was it not?

A. I think you will find the by-laws were written sometime earlier in the year, and that Mr. Russell, as we went along, where he found any situation where he needed it to be strengthened, recommended to the board such changes, and the board adopted the recommendations.

Q. Now, with that letter before you, let me ask you if, on the 16th day of November, 1937, Mr. Russell then didn't present to the Federal Home Owners Bank Board what was then a revamped set of by-laws, and if he didn't assign as the reason for the amendments that they were "to strengthen the legal position"?

A. Yes. He didn't revamp the by-laws; he made certain changes which he felt, as an attorney, were necessary to strengthen the association's position.

Q. He revamped the by-laws to get around the situation that it was conducting an insurance company business in the District of Columbia without authority, did he not?

A. I think he limits, in that letter, the reasons for the amendments.

Q. And those changes were made at that time because he, as general counsel, felt it necessary to amend its by-laws in order to strengthen the legal position of G.H.A. if it should be determined that the association was in the insurance business, isn't that true?

A. I think that is the position that Mr. Russell took; it was his idea.

Q. Now, were you so certain then, even after the amendments had been submitted to the board and, as you say, approved, that you were still not violating the law?

A. What? Were we certain that we were not violating the law?

Q. Yes. Were you certain of that?

A. I had no idea we were violating the law.

Q. Will you be good enough to take a look at the second sentence of the last paragraph of the letter and see if that refreshes your memory? (Item 1—Def. Ex. 48)

A. Yes, that refreshes my recollection.

Q. That refreshes your recollection?

A. Yes.

Q. Now, does Mr. Russell there state or reflect the views of the board which approved these by-laws when he stated, "This revision excludes memberships except in the case of employees of the executive branches of the Government, excluding the Army and Navy, and this provision is made to assure us the benefit of an exception from insurance regulations if we are held to be an insurance company;" does that reflect the views of the board of Home Owners Loan?

A. Well, I am not an attorney, Mr. Leahy, and Mr. Russell undoubtedly went into this question very carefully; and he presented his views to the board, we accepted his views.

Q. Do you recall now, after reading this letter, why it was that Mr. Russell made the statement, "if we are held to be an insurance company"?

A. I think there was a great deal said about Group Health; that it would be held to be in the insurance business, an insurance company.

Q. That was the thought in your own group?

A. No, that was the thought outside the group.

Q. And your own group was not certain about it?

A. I personally wasn't, but the lawyers would have to work that out.

Q. Then your lawyer advised you he was not certain?

A. Yes.

Redirect examination:

I expressed to Dr. Neill that Group Health involved group practice and prepayment and what the duties of the

Medical Director would be. We went into the proposed plan in detail.

Over the objection (and exception) of defendants of incompetency, irrelevancy, immateriality and hearsay, the witness was permitted to state what Mr. Zimmerman told him Dr. Woodward said to Mr. Zimmerman, as follows: After Dr. Woodward called on Mr. Zimmerman, Mr. Zimmerman told me Dr. Woodward said that he was going to oppose the organization, that they were very much concerned about this organization and that if money could be appropriated for Group Health, it could be done elsewhere and that he was very much against it and that the subject was going to be discussed before the annual meeting of the AMA at Atlantic City. Mr. Zimmerman told me that Dr. Woodward said he was a member of the AMA, and that they were going to organize to oppose Group Health.

I later talked to Dr. Hooe over the telephone and at the Metropolitan Club. He suggested a plan which the doctor thought would work. I stated that would make Group Health a collection agency for the benefit of the local doctors. Under the plan suggested by Dr. Hooe, Group Health would have a membership, would collect dues but need not have a staff of doctors or nurses or space or equipment, as it could use the local doctors and pay for the services performed on its members by these doctors out of the dues collected and under that plan a member was to have the choice of the doctor and we were to pay a doctor out of the funds collected. I told Dr. Hooe that such a plan wasn't at all along the lines contemplated in establishing Group Health. Dr. Hooe was chairman of the Compensation Contract and Industrial Medicine Committee of the Medical Society.

I talked again to Dr. Hooe on the telephone and told him I felt very keenly about the way Dr. Lee and Dr. Scandiffio had been treated, and that if my understanding was correct, they were entitled to a hearing, by virtue of a letter sent over his signature, and that Dr. Lee and Dr. Scandiffio replied to that letter requesting a date to be set for the hearing, and also stating they would like to appear with counsel, and it was the understanding that that hearing would be before this C. C. & I. M. Committee, and that the hearing had never been granted. As a matter of fact, Dr. Lee tendered his resignation before the second meeting and

Dr. Scandiffio was tried on the basis before the Executive Committee. I told Dr. Hooe, "You knew at the time that you had promised Dr. Lee that if he would give his resignation to Group Health, that you would be glad to recommend the cancellation of all charges against him." Dr. Hooe didn't deny it.

I had a conversation with Mr. Sandidge of Emergency Hospital and informed him that Dr. Neill had told me that Dr. Lee was still a member and that his resignation had not been acted on. Mr. Sandidge said that they would write him a letter and reinstate him.

Recross-examination:

I talked about Dr. Woodward's visit with Mr. Zimmerman personally. There were collectors through the departments that collected dues of Group Health members. At first a voluntary assignment was used authorizing a deduction of the dues from the member's Government salary check.

THEODORE WIPRUD, a witness for the United States.

Direct examination.

By Mr. Lewin:

I have been Secretary of the Medical Society of the District of Columbia since June 1, 1938. Before that I was Executive Secretary of the Medical Society of Milwaukee County. Dr. C. B. Conklin was Secretary of the Medical Society of the District before me. I know Dr. Conklin's signature. The signature of Dr. Conklin is on the following minutes of the Medical Society:

January 6, 1937
March 3, 1937
June 30, 1937
July 29, 1937
October 6, 1937
October 15, 1937
November 3, 1937
November 10, 1937
November 11, 1937
November 17, 1937
November 22, 1937
November 24, 1937
December 1, 1937
December 8, 1937
December 15, 1937
January 5, 1938
February 2, 1938
March 2, 1938
March 16, 1938
April 6, 1938
May 11, 1938
October 5, 1938

and on the following minutes of the Executive Committee of the Medical Society:

June 1, 1937	November 22, 1937
June 21, 1937	December 6, 1937
June 24, 1937	December 10, 1937
July 12, 1937	December 27, 1937
July 27, 1937	January 24, 1938
September 8, 1937	February 21, 1938
September 27, 1937	March 26, 1938
October 11, 1937	March 29, 1938
October 25, 1937	April 11, 1938

I signed the minutes of July 6, 1938, August 1, 1938, August 3, 1938, September 7, 1938, and October 3, 1938.

Chapter 5, Article 1, Section 4 of the Constitution of the Medical Society provides:

"The secretary-treasurer shall make full records of the proceedings of the Society and, after their approval by the Society, preserve them in secure and permanent bound form."

Chapter 7, Article 3, Section 1, provides:

"The Executive Committee shall maintain the following organization: the senior elected member shall serve as Chairman, his immediate junior as vice-Chairman, and the Secretary of the Society as Secretary without vote. They shall keep full records of its proceedings."

The Government then offered in evidence against the defendants the District Medical Society, Dr. Conklin, and against all other defendants as to whom a prima facie case of conspiracy has been laid, the foregoing minutes with the exception of the minutes of January 6, 1937, and March 3, 1937, and the offer is only of the portions of the minutes which relate to Group Health, and as evidence against other defendants comes in which tends to make a prima facie case of conspiracy against them, that these minutes dealing with Group Health be received as evidence against them.

Ruling on this offer was held in abeyance at the request of the defendants.

Gov. Exs. 32 and 33 are rosters of the membership of the Medical Society from January 1, 1937, to December

20, 1938. Gov. Exs. 34 and 35 are lists of the officers and committeemen of the Society from July 1, 1936, to July 1, 1937, and from July 1, 1937, to July 1, 1938.

Gov. Exs. 32, 33, 34, and 35 were received in evidence.[4]

Cross-examination.

By Mr. Leahy:

The publication at times of the committees is not accurate when there is a death or change on the committee, though it is checked pretty closely.

Redirect-examination.

My signature is on Gov. Ex. 31. It was sent to the Council on Medical Education and Hospitals of the AMA. Gov. Ex. 30 appears to be a correct copy of the reply which I received.

Gov. Exs. 30 and 31 were offered in evidence.

The defendants objected on the grounds that the letters were incompetent, immaterial, and irrelevant; there was no proof as to who answered Gov. Ex. 31 or who wrote Gov. Ex. 30; there was no showing of any authority in the writer of Gov. Ex. 30 to bind defendants and they were inadmissible as there was no showing of a prima facie case of conspiracy. These objections were overruled, exception was noted.

I think the initials on the bottom of Gov. Ex. 30 indicate the writer is Dr. C. M. Peterson, who is associated with the AMA. The Secretary of the said council of the AMA in December of 1937 was Dr. Cutter.

The further objection was made to Gov. Ex. 30 in that it enclosed regulations which are not produced and offered with the letter and the effect of such procedure is to cull out only a part of the letter. This objection was overruled and exception was noted.

Gov. Exs. 30 and 31 were received in evidence.

The Government then offered in evidence but did not read the following excerpts from Gov. Ex. 8, being proceedings of the House of Delegates of the AMA:

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[4] Where it is stated herein that an exhibit was received in evidence and the text or substance of the exhibit is not set forth, that means that the exhibit was not read to the jury. Where exhibits were read or described to the jury, their text or substance is set forth.

Report of the Council on Medical Education and Hospitals * * *.

Resolution limiting physicians on staffs of hospitals approved for intern training to members of component County Medical Societies.

Proposed amendments to Principles of Medical Ethics.

Resolution on apparent attempt of Board of Regents of the American College of Surgeons to dominate and control medical practice.

Report of Reference Committee on Medical Education.

Report of the Reference Committee on Amendments to the Constitution and By-laws.

Report of the Judicial Council.

Report of Special Committee.

The above portions of Gov. Ex. 8 were received in evidence.

DOROTHY EVERETT, a witness for the United States.

Direct examination.

By Mr. Kelleher:

From February 24, 1924, to September 30, 1938, I was employed as a clerk-stenographer by the District Medical Society. During 1937 and 1938 I took dictation from officers of the Society and from chairmen of its committees; I took dictation from Drs. Conklin, Hooe, Neill and Sprigg. Carbon copies were made of all dictated correspondence. As soon as we found time, we would file carbon copies, which were not filed before the originals were signed by the writer. Upon occasions the correspondence was mailed before the copy was filed. The stenographer's initials were placed on the carbons. I used a small "e". I attended meetings of the Medical Society in 1937 and 1938 to take notes, that is, to get the gist of conversations of the business sessions. I did not try to get the scientific meetings. I didn't take the proceedings verbatim but made shorthand notes. The next day, probably, I would transcribe the notes not as I took them, that is, I wouldn't put down everything but only the gist of the proceedings, and then placed them on Dr. Conklin's desk. Dr. Conklin would modify them and they would be retyped for the final minutes. My initial "e" would appear on the minutes I typed. Within a few days after the

meetings the minutes were typed in final form. It wasn't my practice to attend meetings of the Executive Meeting during 1937-1938, though I took dictation from Dr. Conklin of what occurred at those meetings within a few days thereafter. I would then type up the dictation. On my vacation, there was a stenographer who might do that.

I typed Gov. Ex. 39 and signed Dr. Hooe's name to it, which he evidently authorized.

Gov. Ex. 39 was offered in evidence, together with the reply by Dr. Lee, marked Gov. Ex. 40 and Gov. Ex. 41. Defendants objected to Gov. Ex. 39 as irrelevant. Defendants objected to Gov. Ex. 40 as pure expression of opinion and Gov. Ex. 40 was rejected.

Gov. Exs. 39 and 41 were received in evidence.

The Government, with permission of the defendants, stated that on Nov. 3, 1937, Dr. Allen E. Lee wrote to Dr. R. Arthur Hooe informing him that he had sent in his resignation from the Society on Nov. 1, becoming effective as of that date.

Gov. Ex. 39 was read to jury as follows:

"November 2, 1937.

DEAR DR. LEE:

You are hereby directed to appear before the Compensation, Contract and Industrial Medicine Committee, which will be in session on Thursday evening, November 4, 1937, at 8 o'clock p. m. in the Medical Society Building, 1718 N Street, Northwest.

Very truly yours, R. Arthur Hooe, M. D., Chairman."

Gov. Ex. 41 was read to jury as follows:

"DEAR DR. CONKLIN:

I hereby submit and tender my resignation as a member of the Medical Society.

Respectfully, Allen E. Lee."

Gov. Ex. 42 looks like a letter I typed. It bears my initial and, I think, Dr. Neill's signature.

Gov. Ex. 42 was received in evidence.

Gov. Ex. 43 was offered in evidence. Defendants objected on the ground that the letter was a hearsay statement. Objection overruled, exception noted.

Gov. Ex. 43 was received in evidence.

The witness identified and authenticated the following:

Gov. Exs.

44	54	72
45	55	74
46	56	75
47	57	76
48	62	77
49	63	80
50	66	81
51	68	82
53	69	83 and 84.

Gov. Exs.

44	53	68
45	54	69
46	55	72
47	56	75
48	57	76
49	62	77
50	63	80
51	66	83 and 84

were received in evidence each against the writer only at this time.

Government also offered in evidence the following as replies to the above letters or letters to which the above were replies.

Gov. Exs.

52	70
58	71
59	73
60	78
61	79
64	81
67	82

Defendants objected as immaterial, incompetent and irrelevant, but expressly waived all questions of authentication. At the request of defendants ruling upon these documents was reserved.

Cross-examination.

By Mr. Leahy:

I have been a clerk with the Medical Society from February, 1924, to the end of September, 1938. I acted as secretary to Dr. Conklin, taking dictation and doing general office work. I took down notes of the meetings of the Society. The Society met regularly on Wednesday evening from October to May, excluding the last two Wednesdays in December and in May. A stated meeting deals with the election of officers and general business. I took notes at Dr. Conklin's direction. I took notes in front of the platform of the Society auditorium, which seats 500 people. I did not take down stenographically everything that was said in the auditorium; I am not a court stenographer. If a speaker were speaking on a particular subject I was not able to take down everything he said verbatim. I tried to get the gist of what was said, writing that in shorthand. Sometime later I made a transcription of my notes and submitted them to Dr. Conklin, and he went over my transcript and determined whether it was in accord with his recollection and would modify, alter, add to or subtract from the transcription. On receiving back the altered transcription, I transcribed it. Someone else may have taken minutes while I was on vacation. I didn't take notes of the meetings of the Executive Committee, as that was not the usual routine. If I did take notes of the Executive Board I would go through the same procedure I have described concerning the minutes for the Society and made no attempt to get the Executive Committee minutes verbatim. If Dr. Conklin was absent, someone would be designated to act as secretary and would revise the minutes just as Dr. Conklin had done. The minutes prepared were not always read verbatim, and if a motion were made and passed, the minutes would be read by title only at the next meeting and at times the reading of the minutes would be dispensed with. The words "Read and appr ved" appearing in the minutes do not mean that the minutes were read verbatim, as sometimes they were and sometimes they were not.

DR. MICHAEL DAVIS, a witness for the United States.

Direct examination.

By Mr. Kelleher:

I am a Doctor of Philosophy, a graduate of Columbia University in 1906. From 1910 to 1920 I was in charge of the Boston Dispensary, a large clinic with a small hospital, and its director. I left the Dispensary in 1920 and returned to New York as Chairman of a committee on Dispensary development financed by a grant from the Rockefeller Foundation to improve the standards of clinics and dispensaries in New York and the country. I am also a consultant on hospital organization and have made studies of hospitals and clinics in different cities, such as Cleveland and New York, for example, and I was continuously with that work from late in 1925 to 1929. A consultant on hospital organization is a person who studies the hospitalization needs of a city and whether existing hospitals are sufficient and whether additional hospitals and clinics are needed, makes a report to the local organization as to what is needed, if anything, after making a general study of the entire subject in the particular locality. I organized a pay clinic for people who can pay for the care they get, including payment to the doctor in the clinic; I organized a small clinic in Boston and a larger one in New York under the auspices of the Cornell Medical College. I remained with the committee on dispensary development until the beginning of 1927; from 1927 to 1929 I was on a consultant basis; in 1929 I went to Chicago to be Director of the Medical Service of the Julius Rosenwald Fund, a philanthropic foundation established by Mr. Julius Rosenwald, the late member of Sears, Roebuck Company, for the welfare of mankind. The purposes of the foundation were to give money to worthy causes within the field of the foundation and designated for its activities. Its activities are not limited to the field of medicine, as its main field was Negro welfare and Negro health in the South. The medical side was secondary, although a fairly important part of its work. I was in charge of all the foundation's medical activities, that is making grants of any money for any medical purposes. Our business was to make a study of the desirability of making the grant where it was applied for, and I was also responsible for making studies of the

medical development generally and directly for funds in the field that is to be expended or were to be expended in the field of medical economics, that is the cost of medical care. From 1931 to 1936 I taught "Social Aspects of Medicine in the Development of Sociology" at the University of Chicago. In 1933 I took charge of a course of hospital administration and management at the University. While at the University I was in charge of the American Hospital Association, an institute designed to help men and women who were already in charge of hospitals to improve their knowledge by bringing them together two or three times yearly. I am no longer with the Fund, but am chairman of the Committee on Research on Medical Economics to which the Fund has granted money. I also served on a committee with Dr. Hugh Cabot. That committee was to study group medical practice, which Dr. Cabot, several other men and myself were members of, the active work being done a year or two years ago. That committee was organized for the purpose of studying group medical practice and its chief task was to prepare a statement of principles under which group practice should be conducted; as a hospital consultant, I made studies for the purpose usually of finding out the needs of cities for additional hospitals, their adequacy, the extent used and in some instances a study might be asked by a single institution where the Board of Directors wanted to determine how that hospital was being run and whether its management and organization could be improved. Some studies were made also for the purpose of enlarging buildings and extending facilities; in the course of the studies I familiarized myself with every phase of the organization of hospital staffs. I have been a member of the American Hospital Association for 25 years, a Fellow of the American Public Health Association; I was Chairman of the American Hospital Association Council for the years 1935 and 1936, and finished a three-year term as chairman of a committee on education; I have been chairman of a committee of the American Public Welfare Association and active in the American College of Hospital Administrators, and an honorary fellow of that organization. I have published a number of books on hospitals and medical services; a book in 1907 on dispensaries; a larger book in 1937 on clinics and hospitals and health matters; several books on the cost of medical care, public medical service, hospital administration and I have written a large number

of articles for professional and lay journals on hospital subjects, the cost of medical care, and related matters.

Hospitals are much more important today than they were sixty or seventy years ago. In 1870 the population of the United States was forty million. At that time there were approximately 50,000 hospital beds in the country. In 1940 the population was 133,000,000 and the number of hospital beds was 1,200,000. Thus, while the population grew about 3⅓ times, the number of the hospital beds increased 24 times. There were 1¼ beds per 1,000 in 1870 and over nine beds per 1,000 in 1940. The investment in hospitals, clinics and subsidiary buildings today is between 3¼ and 3½ billion dollars in the United States, with the greater bulk of that money resulting from gifts or grants either by private individuals, local and state bodies or the federal government. Approximately two-thirds of all doctors in the United States have some affiliation with a hospital. Doctors consider affiliation with hospitals very valuable and important. In surgery a hospital connection entitles the surgeon to treat and operate on his patient, which is practically essential to the conduct of his practice. General hospitals treat any kind of illness brought to them, whereas special hospitals take only special cases. Hospital finances and ownership usually are invested in a lay board of trustees, which is sometimes the governing body of a church, and holds title to its property, is responsible for finances and the business management of the institution. It appoints the medical staff, who do the actual medical, professional work of the hospital. The typical American hospital is run in friendly cooperation with the medical staff, composed of the doctors appointed by the lay board, without interfering with the doctors. The medical staff, that is the regular or attending staff, contains not only physicians and surgeons who are appointed as individuals and who are given the privilege of treating patients, but it is also an organization of physicians required by national professional standards to provide medical care. Thus, the attending staff has its own organization, a governing body for its own professional work and through that body studies and controls the professional standards of the hospital, subject to the oversight of the lay body, which has the legal control of the property of the institution. A wise lay board does not interfere with the professional work in the hospital. That is a

matter which is and probably should be left to the members of the medical profession.

Charity work for hospital patients is treated free by physicians and is controlled by the governing board, who must decide how much charity work can be done. The professional staff give each a part of their time to caring for free patients in the wards. The out patient department of the hospital is for people who are able to be up and about and come to the institution for care without going to bed, and is supervised by the lay board in general, but actually controlled and managed by the physicians who are in the clinic of the hospital and do the actual work. In some instances the regular staff of the hospital are paid salaries, but as a rule they are not, receiving their remuneration by having private practice in the hospital without being paid by the hospital in most instances. If the medical staff is paid, they are paid by the hospital, but that is in the minority of cases. The attending physician or surgeon who carries on private practice is paid directly by the patient and by private arrangement between the patient and physician. Membership on the regular staff of the hospital is of much value to the doctor, because it gives him definite prestige and helps his practice. Connection with a hospital is regarded in the medical profession and by a large portion of the public as a sign of good standing. A physician who is a member of a regular staff of a good hospital has a definite prestige as a result.

Many hospitals have in addition to their regular staffs, courtesy staffs. A courtesy staff is composed of those physicians who are given the privilege of treating their patients in the hospital under certain restrictions laid down, who are not members of the hospital organization and do not share in the professional responsibility and standards of the hospital. Members of the courtesy staffs are invited to staff meetings in which disease problems and cases are discussed for the benefit of the doctor who enjoys the courtesy privileges. In appointing doctors to the courtesy staff, the regular staff usually, through a staff committee, nominates or advises the lay board as to the physicians who should be appointed to the courtesy staff and the lay body usually follows the recommendations of the medical staff, as they appreciate the qualifications of a physician can be best determined by other physicians who

act responsibly for the lay board. Excluding emergency cases, by and large, no doctor can use hospital facilities in the United States except as a member of the regular or courtesy staff of a hospital, though there are some exceptions.

The AMA inspects a certain number of hospitals to determine whether they should be approved to receive interns for training. The American College of Surgeons inspects hospitals and has an approved list of hospitals that have passed its inspection and have met its standards. There are various other bodies which in other states, under state law, inspect hospitals, and some of the nursing bodies in some states inspect hospitals to determine whether they are of the proper standard to train nurses. The AMA publishes a list of registered hospitals which, on the whole, is the most complete and authoritative list of hospitals we have. A hospital not on the registered list of the AMA is definitely regarded, as a rule, as suffering from the exclusion and is generally regarded as being inferior to hospitals that are on the list. The size of a hospital does not bear on the inclusion in the list, though it does bear on the list for approval for training interns.

An intern is a physician who has just graduated from medical school and is taking one or more years' training in hospital work in continuation of his training. In a hospital he has opportunity to work with sick people under the direction of the staff, and internship is regarded as an essential part of the doctor's training, and, in some states is a legal requirement to professional status. A resident is one working in a hospital who is further along and is working in a specialty, such as surgery. A good many hospitals pay interns nominal sums, ranging from $15 to $25 a month, but a good many of them do not pay anything at all, as the training is such that he who seeks it gets little or no compensation, though he is given his lodging and maintenance while in the hospital. The hospital gains a certain amount of actual services in caring for sick people from the intern, as he is an unpaid and a very hard worker during his internship. A hospital gains a certain amount of prestige as being regarded as sufficiently good to train interns. The AMA considers the size of a hospital in passing upon the approval of a hospital for the training of interns, and the general standards

are that a hospital which has as many as 100 beds and 75 patients, with some exceptions, is deemed sufficiently large to give training to an intern. AMA approval for training interns is extremely important to a hospital. A hospital which does not have that approval will generally find it impossible to obtain young men who are willing to go there and work as interns. Thus, if a hospital wishes interns, and most hospitals wish to have interns, it is extremely important that they have approval. If a hospital would lose its approval for receiving interns, it could no longer get interns and would lose the services of these young men. If the hospital were to continue the same quality of service to the patients, it would have to employ them on a salary, that is employ young medical men to do the intern work which the interns would do if they were there, so there would be a substantial loss to the hospital if approval were taken away. The hospital also loses prestige. Physicians on the regular staff would feel that the hospital had suffered and some of them might be inclined to shift their patients to other hospitals.

The young medical man is keen to get the best training and seeks an internship where he will not only get good training but will also get a good standing in the profession, and, if he has had an internship in a hospital not up to form, it is a definite handicap to the young doctor. The mere fact that the hospital is not on the approved list is going to be a handicap.

I was a member of a committee on costs of medical care. It was organized in 1927 to make a thorough national study of the cost of medical care and related subjects, with the aim of trying to improve the situation. Its Chairman was Dr. Ray Lyman Wilbur, President of Stanford University, former Secretary of the Interior, and a past President of the American Medical Association. The committee was formed of fifty members and ended with forty-eight. Of the forty-eight members twenty-five were doctors of whom fourteen were engaged in private practice. Some of the doctors were Dr. Walter Bowers of Boston; Dr. Roger Smith, a pediatrician; Dr. Stuart Roberts, Atlanta; Dr. George Follansbee of Cleveland; Dr. Steiner of Connecticut. Several men engaged in public health work, not physicians; several physicians engaged in public health work, such as Professor Winslow of Yale, several sociologists and

economists, such as Professor Ogburn of the University of Chicago; and Professor Mitchell of Columbia University; three dentists; two nurses, two or three men connected with the drug business; and men of general public interest were also on the committee. Dr. Olin West and Dr. Christie were on the committee.

The committee made a series of studies of the amount of service, cost of service, and published reports of its findings. and made recommendations as to what should be done to make medical care more available. One study was made of 9,000 families in all parts of the United States to find out the amount of sickness and what it cost them. Each family was visited approximately every six weeks or two months throughout a year by a trained person, who found out the general facts concerning sickness and its cost. The committee made studies of medical care in certain communities. It studied medical care in Philadelphia and Detroit, and in some rural areas in the south and a county in Indiana and a county in California. It studied the incomes of physicians and dentists. Finally, the committee made a study of new plans of medical care, including some prepayment plans where the employees of a large corporation get service and pay for it on a weekly pay roll deduction basis. It studied medical plans of universities for students, the medical care of the Army at one of the large Army posts. The committee had an executive committee of 8 persons which supervised every study. Technical people carried on the details supervised by the executive committee, which planned the studies with the staff and which read and criticized the material as it came in from the field. I was a member of the executive committee and Professor Charles Edward Winslow was Chairman. The 9,000 families I mentioned were selected in communities of different sizes to represent all types of income groups. The families were classified by income as under 1,200; under 2,000; 2,000 to 3,000; 3,000 to 5,000; 5,000 to 10,000; and 10,000 or over. Approximately 38,000 individuals were involved in these 9,000 families.

Q. What conclusions did the committee reach from the studies of 9,000 families which you have described concerning the relation between the amount of medical care received by the families studied and their incomes?

The defendants objected on the grounds that the question called for conclusions of a purely private committee, a voluntary group which had made a study of what they thought would be a representative group of American citizens, that is, a mere 38,000 out of a population of 130,000,000; that this committee is not qualified to give the conclusions called for; that the answer would be hearsay as to every other member of the committee and if the opinions of the members were to be shown they should be shown by each member, and not by this witness; that the report is incompetent, irrelevant and immaterial, particularly as it does not concern medical care and medical costs in the District of Columbia and is too remote. These objections were overruled and exception was allowed.

A. Well, roughly, the more income families had the more medical care they received. I can illustrate that.

We can measure the medical care in terms of the number of visits from or to a physician during the course of a year.

The figures are somewhat like this.

That for families of income under twelve hundred a year it showed an average of 1.9 visits from or to a physician during the course of a year.

The number of calls or visits from or to a physician increased with each increase in income, until at the top level families of income of ten thousand and over received 4.7 visits from or to a physician during the course of a year. So there was a steady progression.

By the Court:

Q. That is for the family and not the individual?

A. No. That is for the individual.

Another way of measuring the amount of care, of course, is in relation to hospitalization.

The average amount of hospitalization is measured in terms of the hospital days; that is, a person who goes to a hospital and spends one day there, that is recorded as a unit of hospital service, one patient-day's care.

Now, in that unit we found a very interesting and surprising thing with families of the lowest income, some of whom were on relief.

The average amount of care received by an individual in a hospital during a year was nine-tenths of a hospital day; a little less than one day's care.

When we moved to the next group, twelve hundred, the amount of hospital care dropped to about .66; that is about two-thirds of a hospital day instead of nine-tenths.

Then, after that, in general, the amount of hospital care received rises with income, reaching about 1.2 hospital days' care for the families of incomes of ten thousand and more; hospital day's care for the person in that group.

By Mr. Kelleher:

Q. That 1.2 days for families with incomes of ten thousand or over is to be compared with how many, of the families with incomes between twelve hundred and two thousand?

A. About two-thirds of a day. It is not quite double the amount.

Q. Did the study show anything concerning the percentage of families in the various groups receiving no income whatever—receiving no medical care whatever, excuse me.

A. Yes, there were a substantial number of families, not quite half the total number, of individuals, who received no medical care.

Of course it is clear that there are two reasons for that. One is that they are not sick. The other is that they were sick but didn't get care.

So the percentage of persons not receiving care throughout the year was about 47 per cent of the total number of persons.

That percentage, however, was less among people with larger incomes than among people with smaller incomes, so there again was a shift as we went up in the income scale, the proportion of people who received no care, medical care, during the year, grew less, substantially less.

Among the highest income group only about one person in seven went without any medical care during the year; whereas, of the lowest income group about half went without any care.

Q. Is there any reason why people in the low income groups should have less illness than in the high income groups?

A. No.

In addition to the general objections, the defendants objected on the further ground that no qualifications had been shown in the witness as an expert able to answer such

a question. These objections were over-ruled and exception allowed.

Q. Did the study consider whether there was any reason why there should be less sickness in the low income groups than in the high income groups?

A. This study did not make a particular investigation of that point.

Q. Have you made any investigation of that point?

A. I have not personally. I am familiar with studies which I regard as authoritative which have made investigations of that point.

Q. What have those studies shown?

Mr. Leahy. Let us see what the studies showed.

By Mr. Kelleher:

Q. What are the studies?

A. After the committee on medical care a number of additional studies have been made.

For example, several studies conducted by the Milbank memorial fund entitled "Health and the Depression;" then another study conducted in 1935 and 1936 by the Government through the United States Public Health Service, usually called the National Health Service.

Those studies led to certain conclusions on the matter you have asked me. I regard those studies as authoritative.

Q. What conclusions did those studies reach?

A. They reached the conclusion that there was more sickness generally among people of small income than among people in comfortable circumstances.

The difference isn't as great as the difference in income, but on the whole, people in the smaller income groups have more sickness; as shown by these studies.

Q. Dr. Davis, what did the study show concerning the financial burden for medical care as between two or more families in the same income group?

A. The study of these 9,000 families led to the conclusion, which we all knew in advance, that sickness falls unevenly, and, its cost likewise.

It did, however, give us some figures showing how uneven the burden does fall.

We get quite a few figures. For instance, in the income group of between twelve hundred and two thousand a year, about 5, a little more than 5 per cent of the families, had

relatively large sickness bills running through—in the year, running to a total of $250 or more; and that 5 and a fraction over per cent of the families had spent for sickness 32 per cent of the total amount spent by all the families.

If we compare that with the families who had little sickness and low costs therefor, we find that almost 70 per cent of the families spent about 24 per cent of the total; whereas, a little over 5 per cent of the families spent 32 per cent of the total.

So that a relatively heavy burden falls on a small proportion of the families; who, of course, cannot predict in advance whether they are going to be the lucky or unlucky ones in most of the cases.

Q. Will you give us some figures to show the burden borne by relative percentages of all the families studied?

A. If we take all the families together, all income groups, the figures are very striking.

About 10 per cent of all the families bear about 41 per cent of the total burden of sickness costs during the year.

On the other hand, 58 per cent of the families bore only 18 per cent of the burden.

A large number bore a small burden and a small proportion bore a heavy burden.

Q. Dr. Davis, did the committee make any recommendations?

A. Yes. The committee made a number of recommendations, the committee making a main report signed by 35 of its members, and a minority several minority reports with differing recommendations being made.

The committee was not unanimous in its recommendations.

There was no criticism of the study in the minority report but the recommendation for action differed.

The 35 members endorsing the majority report included 17 physicians, 9 of whom are in private practice. The main recommendations of the majority were to develop the medical care on a group prepayment basis, preferably in association with group medical practice. Those were its two main recommendations. The main minority report criticized group payment as tending towards undesirable contract practice and various evils and criticized group medical practice. The minority report was endorsed by the defendants Dr. West and Dr. Christie. The reports of the com-

mittee on the cost of medical care were all published, and filled 28 volumes of text. The recommendations fill one volume and the studies fill the remainder. The final report is a small volume which includes the recommendations of the majority and of the minorities, and is called "Medical Care for the American People," and was published at the end of 1932.

Witness excused.

Gov. Ex. 102, portions of the proceedings of the House of Delegates of the AMA of 1933, pages 21, 51, 55 and 59, was offered in evidence. Gov. Ex. 102 was received in evidence and read from to jury as follows:

"Resolutions from Constituent State Medical Associations Requesting National Medical Organizations to Declare Opinions on Medical Practice through Approved Channels

The following resolution adopted by the board of trustees of the Medical Society of the State of Pennsylvania, has been transmitted to this Board:

Whereas, There have been formed important national organizations of physicians, specialists, other than the American Medical Association, and

Whereas, Such organizations fundamentally formed for scientific purposes have from time to time publicly expressed opinions concerning the entire practice of medicine, especially in its social and economic relationships, and

Whereas, An unusual emphasis on the social and economic position of medical practice has recently been precipitated by the published report of the national committee known as the Committee on the Costs of Medical Care; be it

Resolved, That, in the interest of the welfare of the public and the maintenance of the most serviceable form of medical practice, the proper representatives of the American Medical Association request other national medical organizations whose qualifications for membership include membership in the American Medical Association to declare publicly their opinions on general social, legislative, and economic relationships of medical practice only through approved channels of the American Medical Association. To this end the Board of Trustees of the Medical Society of the State of Pennsylvania pledges its own efforts and influences to bring about this most desirable point of view

in the minds of the members of the Medical Society of the State of Pennsylvania, who are also members or Fellows of the other organizations referred to. They also respectfully request the Board of Trustees of the American Medical Association to bend every effort to accomplish this purpose throughout the Association at the earliest possible moment in order that the same evolutionary progress of medical practice may not be disturbed by social experiments which endanger the health and the welfare of our citizenship, and which have proved a pernicious health influence in other nations.

A similar resolution adopted by the council of the State Medical Society of Wisconsin has also been submitted. (52) (55)"

Mr. Kelleher: The proceedings show that the resolution was adopted.

"Resolutions Endorsing Minority Report of Committee on the Costs of Medical Care

Dr. Henry C. Macatee, District of Columbia, presented the following resolutions, which were referred to the Reference Committee on Legislation and Public Relations:

Whereas, The Medical Society of the District of Columbia has endorsed the Minority Report of the Committee on the Costs of Medical Care, and has undertaken to engage in an intensive campaign to educate and inform its constituency regarding the socio-economic aspects of medical practice, with a view to the maintenance of high ethical standards and the preservation of professional ideals;

(a) By the dissemination of literature;

(b) By the organization of a speakers' bureau for the purpose of presenting various aspects of the subject to the membership;

(c) By the organization and conduct of study groups, and

(d) By the employment of such other means as may from time to time be deemed expedient for that purpose, and

Whereas, The Medical Society of the District of Columbia has by resolution instructed its delegate to endeavor to secure the support of the American Medical Association both of the Minority Report of the Committee on the Costs of Medical Care, and of the society's plan for promoting harmony of professional opinion and action on the socio-economic aspects of the practice of medicine;

Resolved, That the House of Delegates of the American Medical Association endorses the Minority Report of the Committee on the Costs of Medical Care as expressive, in principle, of the collective opinion of the medical profession; and, in order to clarify and harmonize the thinking of the individual members of the profession on the general subject of the said report, and on allied subjects.

Resolved, That the Board of Trustees be requested to undertake 'the sponsorship, direction and active participation by the American Medical Association in an intensive campaign to be conducted in cooperation with its constituent bodies for the purpose and along the lines indicated' in the first paragraph of the preamble to this resolution. (58) (59)"

Mr. Kelleher: The subsequent portions of the proceedings show that that resolution was adopted by the House of Delegates.

JOHN DONALD LAUX, a witness for the United States.

Direct examination.

By Mr. Kelleher:

From 1934 to 1939 I was assistant to Dr. Leland in the Bureau of Medical Economics of the AMA. Dr. Leland is Director of Medical Economics. I am not a doctor. I was a research assistant and had charge of studies in subjects such as insurance problems and various problems in medical economics, group hospitalization and handled correspondence concerning those matters. I studied plans involving group practice on a prepayment basis as part of our studies of medical service plans. I answered inquiries about types of medical service plans. I worked directly under Dr. Leland. I wrote Gov. Ex. 85. I cannot say whether I had conferred with Dr. Leland before Gov. Ex. 85 was made, but I do believe that the general contents of the letter—we had discussed types of replies of this nature as to the general content of the letter. I was an employee in Dr. Leland's office. I believe that the contents of the letter are generally from the results of studies we had made, and most of those studies were conducted fairly independently. I would not want to be certain that the contents of Gov. Ex. 85 were

approved by Dr. Leland, because he is a very vigorous taskmaster. Whether he would agree with every one of the statements, I would not say; but I think the general content was in accord with our conclusions as to the types of medical service plans. I don't know that he would agree with each one of the statements made. I would say that he would tend to agree with the general implications of the letter; yes. Whether with the specific statements in the letter or not I do not know. I cannot recall an instance of that kind so far back. That would be the general type of letter. Dr. Leland was generally familiar with the general type of letter we were sending out.

Gov. Ex. 88 is a copy of a letter I wrote. I don't believe this letter came to the attention of Dr. Leland or anyone of the officers of the AMA. We received quite a volume of letters of this type, some 3,000 or 4,000 a year and my recollection of this letter would be that it probably was not discussed with Dr. Leland. Replies to letters of this sort were left largely up to Mr. Simons and myself to answer. After having written several hundred of these letters, Dr. Leland thought I could handle the answers, and that while he might not have been familiar with the language, he was familiar with its general implications.

Gov. Exs. 89, 91, 92, 93, 94, 95, 96, 99, and 101 are copies of letters I wrote and they were all handled in a fashion similar to Gov. Exs. 85 and 88. The reference in Gov. Ex. 92 refers to the plans in the State of Washington.

Gov. Exs. 85, 88, 89, 91, 92, 93, 94, 95, 96, 99 and 101 were offered in evidence against the AMA only.

The defendants objected on the grounds that they were incompetent, irrelevant, immaterial, and that the witness' authority to speak for the AMA was not shown, as the evidence showed that the official voice of the AMA is the House of Delegates. These objections were overruled and exception was noted.

Gov. Exs. 85, 88, 89, 91, 92, 93, 94, 95, 96, 99 and 101 were received in evidence.

Cross-examination.

By Mr. Leahy:

I am working as Director of the Michigan Medical Service Plan, a prepayment medical service plan sponsored

by the Michigan State Medical Society, a constituent mem
ber of the AMA. I was employed for 4½ years in D
Leland's office and when letters of inquiry were receive
by me I did the best I could to answer them. Inquirie
about medical service plans alone would number 1,00
letters a year. The letters I identified are but an extremel
small portion of letters I wrote. In only a very few in
stances was there any collaboration with Dr. Leland an
that usually occurred when some particular type of in
formation was asked for, for which we had not theretofor
had an inquiry. The Bureau of Medical Economics, i
which I worked, collected information about medical plan
all over the United States and its incoming mail was i
excess of 5,000 pieces a year, requiring 5,000 answers a yea
The Bureau conducted studies on various economic problem
and plans by questionnaire, by personal investigation an
by information sent in by physicians. A library on th
economics of medicine has been collected, including variou
plans, prepared reports, and we publish a brochure on thes
topics. The report referred to in Gov. Ex. 101 was pre
pared in the Bureau interpreting the principles of ethic
of the medical profession in view of the economic problem
which the profession faced, and indicating why adherenc
to such ethics was necessary, and their purpose. Th
medical service plan referred to as being enclosed wit
Gov. Ex. 101 was a study of the various types of prepay
ment and postpayment plans, with synopsis. There are i
excess of 4,000 prepayment and postpayment plans through
out the country. In the years I was at the Bureau there
were 35 reports, separate booklets, distributed to doctors
as well as being contained in the pamphlet "Hygiene". A
recent report of the Bureau deals with the various new
types of development of prepaying medical service. That
report analyzes all types of medical plans in existence in the
country in order to help persons to obtain medical service
through prepayment or postpayment plans or with the
assistance obtained from Government agencies.

The letters I have identified and the reports which were
prepared by the Bureau were always with the intention of
conveying the facts in an endeavor to give an inquiring
person accurate information, either adverse or favorable
concerning the type of plan to which the inquiry related.
I, throughout my work in Dr. Leland's office, endeavored
to give accurate information in response to letters that

came to me for answer. My authority while I worked in the office of Dr. Leland was merely to answer these requests for information. I had no authority to declare policies for Dr. Leland's office as policies were decided upon by the House of Delegates and the Board of Trustees of the AMA, and, because of this situation, as frequent requests would be received for information about types and plans which had not yet been brought before the House of Delegates, it was necessary to say that this information is given which you request and is confidential. We would further advise the inquirers that until there had been received a full report concerning the plan and it had been acted upon by the House of Delegates, we were unable to take any official position with reference to the plan or type of practice, and would say in concluding, opinion is given merely as a business courtesy. No responsibility is to attach to the American Medical Association or its officers personally for the information herein given. A representative of the Department of Justice went through our files and took out the letters he thought were of interest to him. In 4½ years at the Bureau I wrote about eight or ten thousand letters.

Redirect examination:

The prepayment plan with which I am now associated commenced in March, 1940.

Q. In so far as the letters which have been offered through you criticize a particular plan, does that criticism expressed in these letters reflect the policy of the American Medical Association?

A. The criticisms on the particular plans mentioned in those letters was in accordance with the policies advanced by the American Medical Association.

Recross-examination.

Q. Let me be specific: let us take 89, which we had before. Wherever there is any expression of opinion contained in the letter is that expression given in accordance with what you stated in this letter of November 30th, 1937; that the opinion was given merely as a business courtesy?

A. Yes, the endeavor was to give to the inquirer the facts as we had them in our files, that is about the particular type

of medical plan. There was no particular reason other than that to give them the information as to what the plan was. If they asked whether such a plan was operating satisfactorily we tried to give them the information as we had obtained it through investigations or other information or data received through the members, or otherwise; often from those engaged in the plan or from members in the locality.

Q. Now, you stated on the second page of your letter—the first page is an outline of the medical service plan at Trinity Hospital at Little Rock, Arkansas, is it not?

A. Yes.

Q. Now, where did you get your information about that?

A. We had a rather complete report of some 48 pages made by an investigator who was there to study the plan.

Group Health Association, Inc., at Washington: "The enclosed article prepared by Dr. Woodward, would probably give the information you want. As you know this Association was discussed rather extensively at the Secretary's Conference" and the Hospital Guild, where did you get that? The Economy; and the Bassett; the Thompson Benefit Association, Brattleboro, Vermont: Where did you get your information about those?

A. The Bassett Plan published a report on its experience over a period of three or four years. In addition we have considerable correspondence pertaining to it. The Economy was a rural medical plan; we had a number of pieces of correspondence from the doctor who was formerly in charge of that plan, and from others in the Society. The Thompson Benefit Association, Brattleboro, was a hospital service and a surgical insurance plan; they published a number of, two or three reports, over those years that we had received.

Q. And is that what you enclosed when you stated, "The enclosed outline of those plans" was going forward?

A. Yes, that was a kind of synopsis of the plans and reports which we prepared to make the information more readily available to the inquiring person.

Q. And you added, "There are several other plans of a similar type, but as a general rule they do not provide the complete services claimed nor are they solely supported by dues collected from the members.

A number of independent services have agreed that medical services cost an average of not less than $100 per family, or $25 per person. It is inconceivable that any

insurance or prepayment plan can provide the same services for lower average charges. Either the services are not as complete or the quality of the services is impaired. Frequently the members who ask for service are given the complete run of the mill which always entails special charges for special services. It is also not uncommon to find that dues and special charges are insufficient to support the plan and that the deficits are made up from profits derived from extra activities, such as soda fountain, magazines, or direct sales.

Income from non-members is also an important financial item.

This information is given which you request and is confidential. Opinion is given merely as a business courtesy. No responsibility is to attach to the American Medical Association or its officers personally for the information we have given."

Were those comments based upon service reports you had, and which were read and studied by you?

A. Yes, they were an analytical study of those plans.

Q. Are those comments, whether critical or otherwise, based upon what those studies show?

A. They were based upon studies of these plans.

Q. And do you think that while you were there that you studied plans for the distribution of medical care which would run up into the thousands?

A. Yes, that is certainly true.

HATTIE A. NIEHOFF, a witness for the United States.

Direct examination.

By Mr. Kelleher:

I have been employed by the AMA for 27 years. During the last 10 years I have been secretary to Dr. West, the Secretary and General Manager of the AMA. I know his signature. I at times wrote letters and signed them for Dr. West. I think I was authorized to sign Dr. West's name when I did. I think I typed Gov. Exs. 103, 105, 109, 110, 112, 113, 114, 115, 117, 118, 119, 120, 125, 123, 126, 128, 129, 132, 133, 138, 141, 143, 144 and 145. I usually took notes of the minutes of the proceedings of the Judicial

Council. Gov. Ex. 134 is a photostatic copy of the minutes of the Judicial Council of June 6-10, 1937. Gov. Ex. 135 is a photostatic copy of minutes of the Board of Trustees of the AMA of June 29, 1937. Gov. Ex. 136 is photostatic copy of the minutes of the Board of Trustees of the AMA dated November 18-19, 1938. Gov. Ex. 137 is a photostatic copy of the minutes of the Judicial Council of November 12, 1937. Gov. Ex. 145 appears to be an opinion of the Judicial Council of AMA, dated October 19, 1932, in the case of Dr. A. L. Curtin and others. Dr. O'Shea, Dr. Donalson, Dr. Cunniffe, Dr. Follansbee are members of the Judicial Council. Gov. Ex. 117 is an account of a conference held at the AMA office on November 6, 1937, on which I took notes and which I typed. I am no court reporter, so I cannot say I took word for word.

Gov. Exs. 103, 105, 109, 110, 112, 113, 114, 115, 117, 118, 119, 120, 125, 123, 126, 128, 129, 132 and 133 were received in evidence against the AMA and the writers at this time.

Government counsel also offered Gov. Exs. 104, 106, 108, 111, 116, 121, 122, 124, 130, 131, 134, 135, 136, 137, 138, 141, 142, 143, 144 and 145 in evidence. Defendants objected as immaterial, incompetent, irrelevant and too remote. Objection overruled and exception allowed.

Gov. Exs. 104, 106, 108, 111, 116, 124, 127, 134, 135, 136, and 137 were received in evidence against the AMA at this time.

The court at the request of defense counsel reserved ruling upon Gov. Exs. 121, 122, 130, 131, 140, 142, 144, and 145 on defendants' pending objection.

Mr. Richardson: We had some doubt as to whether the record is sufficiently clear that the testimony which is being admitted under the background is being objected to regularly; that is, whether our objections appear in the record.

The Court: You mean to all of this?

Mr. Richardson: I wonder whether it wouldn't be better to make a definite objection and then the Court may overrule the objection, with our exception understood.

The Court: What is the basic ground?

Mr. Richardson: The defendants object to the testimony in this case with respect to transactions by the American Medical Association having relation to other plans and attempts at so-called group practice, upon the grounds that

the same are other than GHA; incompetent, irrelevant, and immaterial in this case; too remote in time and are not identified as relating to plans and methods of medical practice which embrace the same or similar facts and circumstances as that charged in the indictment, with respect to the conspiracy there charged.

Mr. Leahy: May I also add that for the benefit of the Court of Appeals: I understand that the allegations as to background have been held admissible and proper by the Court of Appeals on the authority of the Chicago Board of Trade case. May we add to our objection that there is this distinction between the proof which the Government offers here and that which was received in the Chicago Board of Trade case. That distinction is this: That in the Chicago Board of Trade case that the practice was in the Chicago Board of Trade related solely and entirely to the particular provisions which the Board later adopted as its rule. In this case the Government is not restricting the attitude of the American Medical Association towards GHA, but is going into other transactions which constitute clearly res inter alias; and, furthermore, that whatever the American Medical Association may have done outside of the District of Columbia, it was perfectly proper for it so to do, because it was perfectly legal.

The Court: Let me ask you: My recollection is that the background is general in its terms. It doesn't relate only to GHA; it relates generally to opposition to group health plans; and, secondly, that the Court of Appeals has upheld such a recital in the indictment.

Mr. Richardson: Seemingly so.

The Court: So I have nothing to do, you see.

Mr. Richardson: Will you in ruling upon this objection add to your ruling that we may have an exception?

The Court: It will generally prevail without repeating it on that basic ground. Of course, if you have additional grounds you ought to state them, in any particular case.

Mr. Leahy: Could I just state one more objection: Last night I read over the photostats which you stated you were going to introduce this morning. Some of those come from various officials of the AMA. Now, we don't have any objection to the letter being introduced against the writer of the letter, but our objection is that it ought not be introduced against the American Medical Association; and could our objection run to that?

The Court: You mean in every instance?

Mr. Leahy: Yes.

The Court: Well, if you want to make that a general objection I see no reason for taking up time repeating it on every occasion.

Mr. Leahy: Well, then, I won't make specific objections every time.

Defense counsel admitted the authenticity of Gov. Exs. 147, 149, 150 and 151 for identification. Gov. Exs. 147, 148, 149, 150, and 151 for identification were offered in evidence. The Court reserved ruling on defendants' general objection.

Gov. Exs. 152, 153, 154, 155, 157, 159, 161, 162, 165, 166 and 167 for identification were identified and offered in evidence. Gov. Exs. 158 and 156 for identification were offered in evidence. The Court reserved ruling on defendants' general objection.

A. N. Simons, a witness for the United States.

Direct examination.

By Mr. Kelleher:

I have worked since 1932 in the Bureau of Medical Economics under Dr. Leland. It is part of my duty to receive incoming letters on medical economics and to prepare and send answers on behalf of the AMA.

Gov. Exs. 169 to 176, inclusive, were offered in evidence. Defendants objected on the general grounds that the documents were incompetent, irrelevant, immaterial, hearsay and not admissible as no conspiracy had been proven.[5] No objections were interposed as to their authenticity and genuineness. The Court reserved ruling on defendants' general objection.

Cross-examination.

By Mr. Leahy:

My duties were largely research work, but a certain amount of correspondence was handled also. The research

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[5] This objection when used refers to the objection detailed on pages 223, 228-240, supra.

work dealt with various problems in medical economics and factual studies, covering the entire United States. I consulted with other workers in the Bureau. In 1937 and 1938, four or five were engaged in studying various matters of medical economics. When letters of inquiry came in, I responded, giving the requested information to the general public and to the profession. I handled three or four inquiries a day.

Redirect examination.

I discussed my reports with Dr. Leland. In my correspondence I endeavored to express the policies of the AMA as I understood it.

Recross-examination.

No one had authority to make policies for the AMA except the House of Delegates. The reports I discussed went to Dr. Leland for review and such modifications, changes or additions as Dr. Leland saw fit were made. When letters of inquiry came to me for reply I did not often discuss the replies with Dr. Leland. It was impossible for him to review every reply or even read every letter of inquiry received in the Bureau of Medical Economics.

Redirect examination.

When I expressed opinions in those letters I made them conform with what I believed to be the policies of the AMA, from my discussions with Dr. Leland and my reading of the proceedings of the House of Delegates.

At the suggestion of the Court and with the agreement of counsel ruling on all documents identified by secretaries and stenographers of the AMA would be reserved, except objections as to identification and authenticity. Pursuant to this agreement numerous witnesses were called who identified and authenticated the following. Gov. Exs. 177 to 196, 198 to 291, inclusive, and Gov. Ex. 291A. Defense counsel admitted their authenticity and waived all questions of formal proof, except as to Gov. Ex. 197. Government counsel offered in evidence Gov. Exs. 177 to 291A inclusive, except Gov. Exs. 218, 219, 220, 221 and 222.

The following exhibits were offered and received in evidence but not read to jury over the objections and exceptions

of the defendants that the documents in question generally antedate the commencement of the conspiracy, and relate to matters entirely distinct from the conspiracy alleged and are not shown to be the official action of the AMA and express, in the main, personal opinions of the writers that defendants are not bound by the contents of letters that others write to them, and that the admission of such letters is prejudicial, and are immaterial, incompetent, irrelevant and too remote in character to be admissible.

Gov. Exs. Nos. 264, 265, 266, 267, 268, 270, 271, 272, 273, 274, 259, 260, 276, 279, 278, 280, 277, 284, 258, 257, 282, 281, 165, 131, 291A (in lieu of 291), 166, 144, 145, 246, 254, 255, 248, 249 (except paragraph 2, to which objections were sustained), 256, 250, 251, 252, 253, 209, 210, 232, 233, 247, 244, 245, 234, 216, 217, 206, 207, 208, 211, 205, 212, 213, 214, 236, 235, 231, 237, 238, 242, 215, 243, 223, 224, 225, 226, 227, 228, 229, 177, 198, 199, 178, 200, 179, 180, 201, 187, 188, 202, 186, 181, 182, 183, 184, 185, 189, 293, 294, 190, 203, 191, 192, 195, 196, 197, 204, 152, 153, 154, 155, 156, 120, 157, 158, 159, 162, 161, 147, 148, 72, 74, 80, 81, 64, 67, 58, 59, 60, 61, 71, 77, 78, 79, 70, 172, 170, 169, 171, 174, 173, 176, 175, 122, 141, 142, and 65 were received in evidence. Gov. Ex. 269 was received in evidence without objection.

The Court reserved ruling on the following: Gov. Exs. 285, 286, 292, 193, 194, 90, 150, 151, 73, 73A, 149 and 52.

The minutes of the District Medical Society, being Gov. Exs. 36, 37, and 38, portions of which heretofore had been offered in evidence against the defendants, were objected to by the defendants as being incompetent, irrelevant and immaterial, not properly authenticated, and if admissible at all, they have not been proven relevant and if any portions of the minutes are admissible, it is only those portions which reflect official action of the Society, all other matters being irrelevant, incompetent, immaterial and hearsay; that the official actions fail to show a criminal conspiracy as each and every act therein recited is lawful; that statements of third persons, not conspirators contained in the minutes, are incompetent, irrelevant, immaterial and hearsay; that until a conspiracy is proven by evidence aliunde, the minutes are inadmissible; and that the admission of the minutes violated the constitutional rights of freedom of speech of the defendants and amount to peaceful persuasion and lawful argument.

Whereupon the Court overruled these objections and ruled as follows:

The Court: I have reached some conclusions on this matter. I realize it is a question of real importance. I want to be right about it. In the very nature of things these are questions which the trial judge must dispose of and not let them hang fire and delay the trial of the case.

First, as to whether or not the proof is sufficient to render these minutes admissible under any circumstances, I think it is. I don't go into any reasons for that; they appear in the evidence, and, it seems to me, that prima facie they are sufficiently authenticated as minutes to make them admissible.

Second, if they are admissible what part is admissible? That brings up to consideration Section 695 of the 28 U. S. Code, which has been referred to. The statute is not altogether new to me. I have had to deal with that at other times in recent years. Its terms are very broad, because it says,

"Any writing or record made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible as evidence of said act, transaction, occurrence or event," et cetera.

The statute refers to the act or transaction, makes the record evidence of that act or transaction, not of the minutes or the making of the minutes but of the particular act or transaction which, in the particular case, may be in issue, may be a relevant fact.

So that it seems to me there can be no question that the minutes, so far as they relate to the formal actions of the corporation fall within the operation of the statute.

Then the question arises whether they go beyond that and encompass those parts of the minutes which refer to incidents and details that lead up to the formal action, or relate to the formal action, having relationship and relevancy to the formal action. In other words, if the action, evidence of which is contained in the offer here—adoption of a motion or resolution—is admissible, as I said they are, then, if that resolution or motion is of such a nature as that in the particular case, it becomes pertinent to dissect it and to ascertain the incidents that have led up to it, then I think it, too, is admissible.

So it would seem to me that any of the minutes which may tend to show any conduct or statements, declarations, on the part of any defendant, who may have participated in the discussion of those matters leading up to these formal actions, would be admissible.

If the minutes, as has been stated, do contain such details, I have no doubt they are admissible.

Now, I think from what I have said it is apparent that formal actions, that the minutes which relate to formal actions of the corporation certainly and concededly would be a record of proceedings within the meaning of the constitutional provision for keeping the minutes.

Defendants wish that term "proceedings" to be limited in a narrow way to these formal actions of the corporation. I am rather inclined to think the term should take a broader meaning, a more natural meaning; and I am led to believe that should be so not only because it seems to me in the use of the word it gives it such a narrow meaning, but because the practice and custom of the association itself in the keeping of the minutes have interpreted it uniformly in a broader way. As I understand it, the minutes have been kept in a way to encompass more than the mere naked statement of the formal action of the corporation itself.

We know that minutes are kept in two different ways; at times in a very narrow, restricted style, by a very naked statement of the ultimate things that are done rather than the incidents which lead up to it, while other secretaries in keeping minutes do it in a way to reflect more than that.

Here the uniform practice apparently, so far as I understand, has been in the way to include in those minutes the part of the record, the history, the historical background, and record of that corporation; these incidents that have led up to the formal action of the corporation.

And as to the verity of such minutes, as they relate to the facts which they purport to report, as I indicated, that goes merely to the weight, not to the admissibility of them. Of course, a stenographic transcript report would be more weighty, undoubtedly; yet that has nothing to do with the admissibility. If there were statements made by parties there which incriminated them in any wise, tend to show that they in any wise participated in this combination, participated in the formation of this alleged combination, it may be proved in different ways; merely by the recollection of one who was there two or three years ago, drawing

on his imperfect recollection two or three years later. This lady who was on the stand here, who made the notes, could be put on and testify from her own recollection, which would necessarily be vague; yet the testimony would be admissible. Certainly these minutes made by her and by Dr. Conklin at the time when she had only her own stenographic ability to report the substance of what was said, I say, not only that ability but also the benefit of the attention given to those minutes by the then fresh recollection of Dr. Conklin, the secretary who subscribed to their verity—these people who were acting pursuant to their duties in that regard, that is with respect to the particular work they were doing. So that I can very well see there may be some difference in the weight to be given to these things by reason of the fact that it is not a verbatim report, yet I cannot assume that the Hitchman case, the Hitchman decision, is grounded upon the theory that it was a verbatim report instead of evidence obtained in other more imperfect ways.

Now, of course, I am not unmindful of the very important aspect of the matter which has been presented as to the right of these gentlemen to indulge freely in the discussion of these matters, and freely in persuasion; and freely in doing the acts which were limited to discussion and persuasion, and yet, as I observed the other day, if these acts and declarations by any fair inference have a tendency to show an unlawful combination, then I must admit them. It is for the jury to say, after argument pro and con, whether they do prove what is alleged or whether they don't. So that is a very brief summary of my reasons, but I think the question is worthy of placing them upon the record, briefly stating what they are, so I have taken the trouble to do so. I wish I had the opportunity to write it out, but I think you will gather from what I have said my reasons in support of my ruling.

* * * * * * *

There is one other feature: I don't know whether I should indicate this now or later, but I haven't had an opportunity to read the minutes or analyze them carefully.

There may be parts of those minutes which would not be admissible. For instance, suppose Dr. A, who was present, presented a resolution and in the course of his discus-

sion said, he made his argument in favor of the resolution and he said, "Now Dr. Richardson is not here, but I can tell you with assurances that Dr. Richardson favors this and would support it if he were here."

Now, I don't see how a record of that kind would be admissible against Dr. Richardson. There may be some limitation, based upon the general rules of evidence, which would exclude some parts of this evidence, and perhaps it is only fair that I state that now. I am not ruling on it, but I am indicating that there is that question in the back of my mind, and I think it is only fair that counsel for the defendants should know I am still reserving that aspect of the matter in the event they make such objection.

Exception noted.

COLONEL GLENN I. JONES, a witness for the United States.

Direct examination.

By Mr. Lewin:

I am a surgeon employed on a salary by the Southern Railway. From 1909 until 1936 I was in the Medical Service of the United States Army. When I retired I held the rank of Colonel. As a doctor in the Army I was paid a salary. The Medical Service of the United States Army has displayed a decided attitude toward preventive medicine in the control of sanitary and other conditions which would preclude the occurrence of epidemics of diseases, principally; study of its personnel so as to discover any evidence, any symptoms or manifestations which might suggest the presence of disease among its personnel; by periodic physical examinations and check-ups. Without question, these have value.

In the spring of 1937 I was offered the post of Medical Director of Group Health on the suggestion to Mr. Zimmerman by Surgeon General Reynolds. I was approached by Mr. Zimmerman and Mr. Penniman and asked to make a study and report to them, tell them how it might be done. The first proposition that was put up to me was how physicians might be organized to give medical attention to subscribers in an organization in the HOLC on the basis of

insurance or prepayment for medical attention, I negotiated with these gentlemen for several months.

I was later offered the post of organizing and directing the operation of the medical unit which might be organized at a salary of $10,000 per annum. I was to organize a unit of doctors to be employed on a salary basis. No plan I offered was adopted. The organization of such a medical unit to be successful must have the best men in the profession that could be procured, and, therefore, I contacted the Medical Society to determine if I could get their support. In that connection I saw Dr. Christie, Dr. Groover and Dr. White. I told these doctors that HOLC wanted to organize a medical unit among its employees on a prepayment basis. Dr. Christie indicated his disapproval and said that the District Medical Society was opposed to it and that members of the Medical profession of the District of Columbia who might be invited to join such a unit and did join it could not expect to continue with the District Medical Society nor could we expect members of the medical profession in the District would consult with members of such a group. The other doctors to whom I talked took a similar position. Such observations made me skeptical about the success of the prepayment plan with that unit. I reported these facts back to Mr. Zimmerman and Mr. Penniman. They called a meeting of Surgeon General Rossiter of the Navy, General Cummings of the Public Health Service, General Reynolds of the Army and the Commissioner of Health, Dr. Ruhland, and a representative of the Twentieth Century Foundation. The result of the discussion at the meeting was the beginning of my withdrawal from participation in the project. I was invited and attended a meeting of the Medical Society shortly after that. Before this meeting I also attended a meeting in the office of Dr. William Gerry Morgan, which Dr. Macatee, Dr. Willson and Dr. Verbrycke also attended. I was questioned about the proposed medical project in the HOLC, and it was discussed. I expressed the opinion that the medical profession should take hold of a project somewhat like this and organize it and lead it. No decision was reached at that meeting.

The meeting I attended in the Medical Society followed. I spoke at the meeting. The substance of my remarks are shown in the minutes of the meeting of June 1, 1937 (Gov.

Ex. 36), though I do not understand the portion which reads as follows: "He told them frankly that if the Medical Society of the District of Columbia disapproved their efforts that there could not be any available medical assistance that could be depended upon." After the meeting I went back to Mr. Zimmerman and Mr. Penniman and declined the medical directorship of Group Health.

Q. Did you state your reasons for doing so?

A. Yes.

Q. What were those reasons?

Mr. Leahy: To whom were they stated?

Mr. Lewin: I want to know what the reasons were.

Mr. Leahy: Ask him that.

Mr. Lewin: I have asked him that.

Mr. Leahy: I object as immaterial.

The Court: Objection overruled. (Exception noted.)

A. I gave as my reasons that—first of all, I indicated that I held the opinion individually that there was a wage group who could be better cared for if a better arrangement were made for medical attention to that group.

By Mr. Lewin:

Q. What was the better arrangement?

A. There are a number of them.

Q. Which was the one that you preferred and recommended?

A. I don't know that I had any choice of the three. I made a recommendation to them for theirs, but for a general organization to affect all people who might need medical attention I had another view.

Q. I did not ask you about that. I asked you what the plan was that you said you preferred, that you thought would help these people with a certain income. What was it?

A. I had no plan, myself. I say I had an opinion.

Q. Let us have that opinion. What was your opinion as to a plan that would help that group?

A. I had no specific plan. It was any one of three or four that I can state to you.

Q. State the one that you preferred. You had a preference, did you not, as among the three?

A. You mean, as far as myself was concerned?

Q. Yes.

A. As applied to the general public, no. As applied to the HOLC, I did.

Q. What was that?

A. To the HOLC?

Q. Yes.

A. The plan which I proposed to them that could be most effectively operated was one in which they would have——

Mr. Leahy: If your Honor please, we have gotten off the case.

Mr. Lewin: I don't think we have.

Mr. Leahy: The question was, what were his reasons for declining the directorship?

Mr. Lewin: We have another question.

Mr. Leahy: His Honor has already ruled.

The Court: Are you objecting?

Mr. Leahy: Yes, your Honor.

The Court: Objection sustained. Go back to that same question. You got off of that. The question was, What reasons did he have for declining the directorship?

The Witness: My reasons for declining the directorship were that I felt that such a project, if engaged in, should be composed of the best that could be produced in the medical profession and be guided by the people who represented the best interests in the medical profession.

By Mr. Lewin:

Q. Why did you decline? Did you find that that could not be done?

A. I felt so.

Q. You felt so?

A. Yes, definitely.

Q. Why did you feel so?

A. For obvious reasons.

Q. What were those obvious reasons?

A. That the District Medical Society or individuals in the District Medical Society had indicated their unwillingness to proceed and had indicated that they would not consult with the group, which automatically denied to the unit the best that the medical profession had to offer in the city of Washington.

I recognize the signature on a letter from Surgeon General Ireland of the Army to Dr. Cutter dated March 27, 1937,

marked Gov. Ex. 295. General Ireland had been a member of the Council on Medical Education of the AMA.

Gov. Ex. 295 was offered and received in evidence.

Q. I would like you to read that letter over to yourself. I want to ask you a question or two about it.

Did you ever state to the Surgeon General or to General Ireland the things which are attributed to you there?

Mr. Leahy: We object. I do not know what he is trying to do—impeach the letter or impeach his own witness.

Mr. Lewin: I am trying to get at the fact.

The Court: The letter is in without objection. Under those circumstances, if Colonel Jones is familiar with it I see no objection to his being asked about any incident that relates to him or any statement which relates to him.

By Mr. Lewin:

Q. Let me read you this. It says:

"After this visit"——

Speaking of your visit——

"with the men from the Home Owners Loan Corporation; which lasted for a period of two or three hours, Jones telephoned to the Surgeon General to the effect that this was nothing but an entering wedge to the establishment of state medicine."

Did you state that to the Surgeon General?

A. I made some observations which were not as positive or direct as stated by General Ireland in connection with that, in that particular, both to General Ireland, General Reynolds and all of the members of the group, all of the generals who met with the District Medical Society collectively and individually.

Q. Did you state that in your opinion what you were asked to head was nothing but an entering wedge of the establishment of state medicine?

A. Not in those terms.

Q. Did you say that in substance?

A. I made this observation substantially as follows, that I felt the medical profession had a job to do in providing some way to take care of a prepayment plan——

Mr. Leahy: Pardon me, Colonel. I do not like to interrupt you, but I submit that that is not proper, if your Honor please.

The Court: Are you objecting to it?
Mr. Leahy: Yes, sir.
The Court: Objection sustained.

By Mr. Lewin:

Q. Did you say this? Did you say to anybody that you were dropping this plan like a hot cake, as early as March 27, 1937?
A. No.

Cross-examination.

By Mr. Leahy:

Except for four years I have spent my entire professional career in the Army, and I was paid in accordance with the rates of pay set forth in the statute to cover all officers in the Medical Corps of the U. S. Army and Navy.

The preventive medicine which I stated I was interested in means proper care as to ventilation, disposal of waste, the care of streets and grounds, the early recognition of individual cases of infectious diseases, the inspection and preservation of food, the testing and care of water supply and similar things. All reputable doctors are interested in preventive medicine, without question. I have been a member of the AMA for over a period of years. Members of the AMA have been generally and actively interested in preventive medicine.

I consulted with some friends I knew in the District Medical Society. I have known Dr. Christie 25 years, Dr. Groover over 25 years, Dr. Macatee over 30 years, Dr. Verbrycke over 30 years. I had confidence in the judgment of these men and that is the reason I went to chat with them. I considered these men as some of the outstanding physicians of the District. When I talked to the Surgeon General, I thought state medicine was concerned in the plan but Gov. Ex. 295 does not convey the thought I expressed to the Surgeon General. I also mentioned the Twentieth Century Fund was interested in supporting it. I told the Surgeon General that the District Medical Society was opposed to the plan. I did not say anything to the Surgeon General about dropping the matter. I more than likely made an observation to the effect that I did not see how this project could succeed, since it was violently opposed by the members of the District Medical Society. I

found this out within three or four days after I had first interviewed Mr. Zimmerman.

I did not know that General Ireland had written this letter. I discussed the HOLC situation with General Ireland prior to March 27, 1937. I told General Ireland that the Medical profession had a job to do in providing some way to take care of the low-wage group and to let it get out of the hands of the medical profession and into the hands of laymen who knew little about the medical side, would finally resolve itself probably into state medicine or socialized medicine. Unless a group of laymen who organized a corporation to provide medical care, were supported by the medical profession, it was an entering wedge to state medicine and that would be so unless it was controlled and managed by the medical profession. I told General Ireland that a group of laymen who could organize such a corporation as that would not be the proper parties to attempt to distribute medical care to the low-income group, as I am of the view that any attempt on the part of laymen to distribute medical care would be an entering wedge to state medicine. Dr. Christie, Dr. White, Dr. Morgan, Dr. Groover and Dr. Verbrycke expressed themselves as opposed to it, that they could not be sympathetic toward the project; that any member of the medical profession in the District of Columbia who joined it would be kicked out of the District Medical Society or lose his membership therein, and any member of the medical society in the District of Columbia who consulted with a member of the group would likewise be put out of the District Medical Society. They feared that it was, in effect, an entering wedge to state medicine. I do not think that state medicine is in the public interest.

Redirect examination:

Q. Did you think that the plan which you were asked to head as medical director was itself an entering wedge for state medicine?

A. I think I will have to answer that my own way. You keep talking about my plan when no plan was ever adopted.

If I had been able to secure the support of the District Medical Society so I could have gotten consultants from them and members to serve under me on a salary, I would not have regarded it as an entering wedge for state medi-

cine. I think it would have been a substitute and I would not regard it as unethical. From my training I wouldn't want a layman around such an enterprise, though I would leave the collection of dues to a subordinate layman.

Recross examination:

The care of the sick should be under the direction and control of doctors and there should be no lay interference between doctor and patient. I wouldn't be connected with a plan which permitted such a condition. I would want the management and control, if I were the director of any scheme, with full charge of the medical care and control of the patients. No specific plan was ever adopted and I do not recollect seeing any documents.

Further redirect examination:

Q. Now I have a couple of questions. Isn't it true that one other plan which you suggested and which you were willing to undertake involved prepayment on the one hand and group practice on the other, under a medical director, the physicians being compensated by salary, with a centrally located clinic with hospitalization given in the private hospitals and with consultants obtained from the District Medical Society or any other private doctors?

A. That is correct?

Mr. Theodore Wipfud, recalled as a witness for the United States.

Further direct examination.

By Mr. Lewin:

The minutes of the Executive Committee Meetings of the Medical Society of June 6, 1938, were signed by me as Secretary. The minutes of the Medical Society Meeting of February 3, 1937, were signed by Dr. C. B. Conklin. The minutes of the meeting of the Medical Society of March 10, 1937, were signed by Dr. C. B. Conklin. The minutes of the meeting of the Medical Society of October 20, 1937, were signed by Dr. Conklin. The minutes of the meeting of February 23, 1938, were signed by Dr. Conklin. The minutes of the meetings of March 23, 1938, and April 13, 1938, were

signed by Dr. Conklin. The minutes of October 12, 1938, were signed by me.

The Government then offered the excerpts only from these five minutes, showing the approval of the minutes of previous meetings.

The minutes of the Executive Committee of March 9, 1938, the minutes of the Executive Committee of April 25, 1939, and the minutes of the Executive Committee of July 1, 1938, were signed by Dr. C. B. Conklin. The minutes of the meeting of the Executive Committee of October 24, 1938, were signed by me.

The Government offered in evidence excerpts from those four minutes only to show approval of previous minutes of the Executive Committee.

The Court reserved ruling on these offers which are portions of Gov. Exs. 36, 37 and 38.

BETTY LOUISON, a witness for the United States.

Direct examination.

By Mr. Kelleher:

I am secretary to J. Ogle Warfield, and was his secretary in 1937 and 1938. I took dictation from him concerning correspondence between him and the various hospitals and between him and the doctors of the Hospital Committee of the Medical Society. I sent a questionnaire to the following hospitals: Emergency, Homeopathic, Providence, Sibley, Garfield, Georgetown, George Washington, Columbia, Children's and Casualty, with a letter dictated by Dr. Warfield. The questionnaires which were sent were returned with the blanks filled in. Gov. Exs. 295A through 310 inclusive are the answers to the questionnaires. Gov. Ex. 311 is a memorandum in the handwriting of Dr. Warfield. Gov. Ex. 312 headed "Committee on Hospitals, 1937 and 1938" was dictated by Dr. Warfield. A letter from Dr. J. Ogle Warfield to Dr. W. Warren Sager, Gov. Ex. 313 bears Dr. Warfield's signature. I sent a letter similar to Gov. Ex. 313 to Drs. Leon A. Martel, William H. Jenkins, Gregg C. Birdsall, Joseph Rogers Young, Dr. William B. Marbury, Jerome F. Crowley, J. P. Shearer, John A. Trinder and Jesse T. Mann,

members of the Committee on Hospitals. Gov. Exs. 314 through 321 are the replies which were received in response to the letters sent to the members of the Committee on Hospitals. The handwriting on the bottom of Gov. Ex. 322 is Dr. Warfield's. Dr. Warfield's signature is on Gov. Ex. 323. The interlineations on Gov. Ex. 324 in the first sentence of the second paragraph on the first page are in the handwriting of Dr. Warfield. Gov. Ex. 324 was dictated to me by Dr. Warfield.

Government counsel then offered Gov. Exs. 295A to 324, inclusive, in evidence.

Cross-examination.

By Mr. Leahy:

I remember Gov. Ex. 324. I recall receiving Gov. Exs. 295A to 311, inclusive, through the mails. I do not know whose handwriting is on any of them. I typed the questionnaires. I do not recognize the typing on Gov. Ex. 304. I typed Gov. Ex. 312. I do not know the handwriting on the bottom of Gov. Ex. 313. Dr. Warfield's handwriting is on the bottom of Gov. Ex. 322, and his signature is on Gov. Ex. 323. I do not know the signatures on Gov. Exs. 321, 320, and 319. Gov. Ex. 318 is not signed. I do not know the signature on Gov. Ex. 317. I do not know the handwriting on Gov. Ex. 316.

Mr. Leahy. If your Honor please, yesterday you will recall that we brought to the attention of the Court that Exhibits 292, 293, and 294, which were offered in evidence on Monday upon the assumption that they had been identified and authenticated—we find upon looking over our records that they have never been identified or authenticated.

Now, I don't know whether they have had a chance yet to run this down.

Mr. Kelleher. Yes, we have. 292 is a copy of Verbrycke to McGovern that was found in the files of the AMA, and we offer it only to show there was a copy in the AMA.

Mr. Leahy. That wouldn't make the contents admissible.

Mr. Kelleher. It makes the contents admissible as to AMA.

Mr. Leahy. No.

Mr. Kelleher. Oh, yes.

The Court. I don't remember it.

Mr. Kelleher. 293 comes within the stipulation of the original article.

Mr. Leahy. All right.

Mr. Kelleher. 294 is a draft of the original article which was taken from the files of the AMA and bears a carbon copy of the note from Woodward to West and Fishbein. The original to West and Fishbein is already in evidence, which clearly authenticates this.

Mr. Leahy. That doesn't follow, because there are certain notations in handwriting, and surely there would be no proof and no authentication of the handwriting anywhere in the notation contained within it, so that wouldn't be admissible against anybody.

Mr. Kelleher. As I understand, the initials "O. W." appear somewhere in the draft of the article. Now did you want us to call somebody to identify that? We can do that.

The Court. Is it the handwriting you want in?

Mr. Kelleher. We want to show the draft was submitted and changes were made. It was sent, your Honor—it appears it was sent to West and Fishbein.

The Court. I think you had better identify the handwriting.

293 is settled?

Mr. Leahy. That is out. It is O. K. if it is within the stipulation, but 292 and 294 have not yet been authenticated.

Mr. Lewin. 292 will come in this morning as a report which was found in the files of the AMA.

The Court. What is it a report of?

Mr. Lewin. It is a report of the committee dealing with group health.

The Court. What is the objection to it?

Mr. Leahy. They are offering it on the theory that something that is found in the files of the AMA——

Mr. Lewin. It is written to Verbrycke.

Mr. Kelleher. What is it doing in the files?

Mr. Leahy. I don't know.

Mr. Kelleher. You can explain it away?

Mr. Leahy. No, no. It is a piece of evidence that is not admissible.

The Court. Pardon me. I wouldn't say that as a legal proposition that anything found in the files of any office

is, by that fact, knowledge. It has to go to the point. You have to show notice of some responsible officer.

Mr. Kelleher. There is evidence to show that reports of the meetings here were being sent from the officials of the DMS to AMA.

Mr. Lewin. Your Honor will remember the testimony about the stamp of Dr. Woodward. There is a stamp right on it.

The Court. Is that the letter (indicating)?

Mr. Kelleher. There is testimony he put his stamp on the letter.

Mr. Burke. Not on that letter.

The Court. When do you want to use this?

Mr. Kelleher. After we have introduced the minutes—or, read the minutes, your Honor.

The Court. Go on and read your minutes. I will look at this.

The following exhibits were read to the jury:

Gov. Ex. 248 is a carbon copy of a letter over the signature of defendant Cutter, addressed to Dr. J. I. Scarborough, Trinity Hospital, 2000 Main Street, Little Rock Arkansas, dated September 9, 1935:

"It has been reported that Trinity Hospital is engaged in contract practice of medicine.

In order that we may have reliable information on this point, will you be good enough to explain just what is the form of service in which you are engaged? Could you send me samples of your announcements and agreements? Do you employ solicitors to procure clients?

Very truly yours,"

Gov. Ex. 249 is a letter from J. I. Scarborough to the AMA, Attention: Dr. William D. Cutter, dated September 16, 1935:

"Dear Dr. Cutter:

Replying to your inquiry of the 9th, I wish to confirm the report that Trinity Hospital is engaged in contract practice.

The attitude of the AMA toward us in this matter has been so arbitrary, unreasonable and unfair that we feel disinclined to discuss the matter further.

Before going to the trouble to supply you with the information requested may I ask what is the purpose of your inquiry and what use you expect to make of the information, if supplied?

Please understand that there is nothing in our plan of practice to be concealed and that my remarks are not directed at you personally but at the organization which you represent. In fact I have very pleasant recollections of you back in the old Baltimore days.

Very truly yours,"

Gov. Ex. 236 is a carbon copy of an original letter over the signature of the defendant Cutter, dated September 23, 1935, addressed to Dr. J. I. Scarborough, Trinity Hospital, Little Rock, Arkansas:

"Dear Dr. Scarborough:

Thank you for your letter of September 16. One of the duties assigned to this Council on Medical Education and Hospitals is to maintain a Register of Hospitals accepted by the American Medical Association. I am pleased to send under separate cover a copy of the Register with our compliments.

I need not tell you the benefits that come to a hospital through recognition in that Register and the favorable publicity which is given since the Register is published in every issue of the American Medical Director and in the special Hospital Numbers of The Journal of the American Medical Association.

Enclosed is a copy of the 'Essentials of a Registered Hospital' and a copy of the 'Principles of Medical Ethics' to which the 'Essentials' make reference. Our object in writing to you was to extend to you the privilege of speaking for the hospital, and particularly supplying information on those points against which some objections have been made and which practices if they do exist and if persisted in would jeopardize the registration of the hospital.

Very truly yours, W. D. Cutter."

In the margin is a pencil notation reading as follows:

"No reply to 10-7-35. Continue hospital in Register?"

Gov. Ex. 250 is a letter from C. F. Snyder, Superintendent, Trinity Hospital, to the American Medical Asso-

ciation, Attention: Medical Directory Department, dated July 7, 1936:

"Gentlemen:

We received our new medical directory today, on our order of August 20, 1935, signed by M. D. Ogden of our staff, and I find that our hospital is left out of the listing of Little Rock Hospitals.

All information blanks ever received from you have been filled out and returned promptly. We have been listed every year since 1924 and have bought a directory every year. We are interested in knowing the reason for the omission.

Yours very truly, Trinity Hospital."

Gov. Ex. 251 is a carbon copy of a letter written over the signature of defendant Cutter, dated July 16, 1936, addressed to Miss C. T. Snyder, Superintendent, Trinity Hospital, Little Rock, Ark.

"My dear Miss Snyder:

Your letter of July 7 to the Directory Department has been referred to the Council on Medical Education and Hospitals. This Council prepares the lists of hospitals for the Directory.

We have, as you say, been pleased to carry the Trinity Hospital in our directory list and register of hospitals for a number of years. However, it became apparent that policies adopted by the hospital made it inconsistent for us to further continue to endorse the institution before our readers. This has reference to methods resorted to in connection with the contract for hospitalization and medical service.

We had correspondence with Dr. J. I. Scarborough but did not receive any answer to our letter written him on September 23, 1935.

Very truly yours,"

Gov. Ex. 210 is a letter from John Walker Moore to the Editor of the American Medical Association, on the letterhead of the Louisville City Hospital, dated May 14, 1937.

"Dear Sir:

I have a letter from the Trinity Hospital Private Clinic, Little Rock, Ark., asking me to recommend them an in-

terinist. In the letter they state that the clinic is owned and operated by Drs. J. I. Scarborough, M. D., Ogden, O. K. Judd and R. B. Moore.

Will you kindly inform me whether or not this clinic is in good standing.

Very sincerely yours, John Walker Moore, Staff Executive."

Gov. Ex. 209 is a carbon copy of a letter over the signature of defendant Cutter, dated May 17, 1937, addressed to Dr. John W. Moore, Louisville City Hospital:

"My dear Dr. Moore:

Trinity Hospital, operated by the physicians mentioned in your letter, is not recognized in the American Medical Association register of hospitals.

We also understand that their scheme of contract practice is not in harmony with their local medical organization, the County Medical Society.

Very truly yours,"

Gov. Ex. 8 is a publication entitled "Proceedings of the House of Delegates of the American Medical Association, the Eighty-Fifth Annual Session held at Cleveland, Ohio, June 11-15, 1934" and on page 35 reads as follows:

"*Resolution limiting physicians on staffs of hospitals approved for intern training to members of component county medical societies.*

(Excerpt)

Dr. G. Henry Mundt, Illinois, presented the following resolution, which was referred to the Reference Committee on Medical Education: (45) (46)

Resolved, That it is the opinion of the House of Delegates of the American Medical Association that physicians on the staffs of hospitals approved for intern training by the Council on Medical Education and Hospitals should be limited to members in good standing of their local county medical societies and that the House of Delegates requests the Council on Medical Education and Hospitals to take this under advisement."

Mr. Kelleher. Subsequent portions of the proceedings show that that resolution was adopted by the House of Delegates.

Gov. Ex. 246 is a carbon copy of a letter over the signature of defendant Cutter, dated December 1, 1936, addressed to Dr. Christopher G. Parnell, Medical Director, Rochester General Hospital, Rochester, New York:

"DEAR DR. PARNELL:

We wrote you on September 8 calling your attention to a recent resolution passed by the House of Delegates of the American Medical Association, as follows:"

The resolution is then quoted.

"Our analysis of the recently submitted staff list was quoted in the inspection report which was sent to you at the same time.

We are anxious to learn from approved hospitals as to whether they are in general agreement with the principle laid down in this resolution, and would be pleased to have your comments in the matter."

Gov. Ex. 254 is a letter from C. G. Parnell to Dr. William D. Cutter, Sec., American Medical Association, dated December 17, 1936:

"DEAR DR. CUTTER:

Relative to the resolution of the House of Delegates favoring a rule by the Council on Medical Education and Hospitals limiting membership on a hospital staff to members in good standing of local county societies, I am in somewhat of a quandary as to just what to say. Personally I feel that members of hospital staffs should be members of their local county societies. However, I do not believe in any inflexible rule setting up such a standard of eligibility.

I suggested to our Board of Directors a change in the By-laws relating to staff appointments, requiring that unless otherwise voted by the Medical Board, no physician would be eligible to the Visiting and Association positions of the staff unless he is a member in good standing of the county medical society. When this proposal was referred to the Medical Board for an opinion, I was rather surprised to find that its members—all members of the county medical society—were unanimously against it. Their feeling was that the county medical society should stand on its own merits and that it should offer enough of itself so that practically every member of a hospital staff would seek

membership, and that anything that savored of compulsion would subject Medicine to the same thing that rouses the resentment of doctors to the actions and attitudes of non-medical organizations.

It was pointed out that only a small percentage of the staff were not members of the county society and that most of this group were younger men, most of whom will shortly join the county society. I am sending you a list of our staff appointments for the hospital year 1935-36, with the non-members checked. You will note that allowing for duplications, excluding the Honorary and Consulting Divisions, there are 128 members, 118 of whom are members of the county society, leaving 10, or 8%, who are not. Even on the Honorary inactive staff of seven members, all but one being over 75 years of age, there is only one who is not a member of the county society. Of the 22 on the Consulting Staff, the only two who are not members of the county society are the Professor of Bacteriology at the University and a bacteriologist who is not an M. D. Our staff represents practically one-fourth of the active membership of the county society. On its membership are the President of the New York State Medical Society; the President, the President-Elect and the Secretary of the Medical Society of the County of Monroe.

I personally have been a member of the American Medical Association continuously for over thirty years and two of my sons are members of county societies.

Under the circumstances, as far as support of organized medicine is concerned, could the House of Delegates very well hold that the Rochester General is an unfit place for the training of interns?

With warmest personal regards and wishes for a Merry Christmas and a successful New Year, I am,

Sincerely yours, C. G. Parnell."

Gov. Ex. 255 is a carbon copy of a letter over the signature of defendant Cutter; dated Dec. 21, 1936, addressed to Dr. C. G. Parnell, Medical Director, Rochester General Hospital, N. Y.:

"My dear Doctor Parnell:

In response to your letter of December 17, let me express my appreciation of your information and your comments on

the affiliation of your staff members with your medical society.

The intention behind the resolution referred to was to smoke out from the staff of some hospitals certain men who were regarded as objectionable but whom the hospital felt a delicacy in removing.

I notice in the figures which you have kindly supplied, that your staff enjoys a very fortunate position with regard to the support of your professional organization, and that apparently any object which the Council might have had in view has already been anticipated.

Cordially yours,".

Gov. Ex. 30 is a carbon copy of a letter over the signature of C. M. Peterson of the AMA, dated December 22, 1937, addressed to Mr. Theodore Wiprud, Executive Secretary, Medical Society of Milwaukee, Wisconsin:

"DEAR MR. WIPRUD:

Enclosed are the regulations governing internship approval by the Council.

To this should be attached the following resolution of the House of Delegates of the AMA, adopted in Cleveland, 1934."

And the resolution which I have read is quoted.

"As far as the language of the resolution is concerned, no distinction is drawn between the full attending staff and other staff divisions. As a matter of actual practice, we carefully check the honorary, consulting, full attending and associate attending staffs in conjunction with our program of inspections. We obtain at the same time a list of all physicians who have courtesy privileges only. We do not check the courtesy list unless we find that all members of the other divisions are in good standing simply because of the magnitude of the task.

Under this principle we nevertheless call the attention of the authorities and staff of every hospital inspected and we have received favorable replies in practically every instance.

If we can be of further aid to you in explaining our method of procedure as outlined above, please call upon us.

Very truly yours,"

Gov. Ex. 145 is an opinion of the Judicial Council of the AMA entitled, "Appeal to the Judicial Council of the Ameri-

can Medical Association of Dr. A. L. Curtin, Dr. H. C. Dallwig, Dr. J. E. Rueth, Dr. Gerald A. Sullivan, Dr. H. F. Walters from the Decision of the Council of the State Medical Society of Wisconsin affirming the action of the Board of Directors of the Medical Society of Milwaukee County, Wisconsin, expelling the above-named doctors from membership", dated February 15, 1938, as follows:

"In 1935, at a meeting of the State Medical Society of Wisconsin, action was taken disapproving the establishment of any plan for the medical care of low income groups by persons not representing the State or County societies.

On February 8, 1936, a special meeting of the Board of Directors of the Medical Society of Milwaukee County was called to discuss a plan for the care of the employees of the International Harvester Company proposed by Drs. Curtin, Rueth and others. Drs. Rueth, Curtin and Dallwig were present. The essential features of the plan as presented by this group were as follows:

1. Unlimited medical and surgical service for $1.00 per month for a single man; $2.00 per month for man and wife; $3.00 per month for man, wife and family.

2. Only diseases excluded from the plan—mental and contagious. Hospitalization not included.

3. There would be no solicitation of patients.

4. All physicians who joined the clinic would benefit from any profits.

5. Patients may select any physician on the staff.

6. Preventive treatment not included in the plan.

7. No written contract between patient and clinic. Participants in plan restricted to those with income of $200.00 or less per month.

It was stated that plans to remodel proposed offices had been made, a lease had been signed, but no equipment had been purchased.

Between February 10, 1936, and February 14, meetings of the Public Policy Committee and the Board of Directors were held and Drs. Curtin, Rueth and Dallwig notified by letter that the plan was disapproved. At the February 14th meeting the Board of Directors directed letters requesting

resignation from the society be sent to the doctors proposing the plan. These letters were sent February 18th and were in the form of charges citing nine offenses.

Late in February, on the advice of counsel the doctors proceeded with their plan and on February 26th announced that the clinic would open for business April 1, 1936. In their letter of announcement they stated that subscribers 'must come of their own free will and without solicitation', making it very plain that the doctors as physicians were so restricted by the Principles of Medical Ethics.

March, 1936. About the middle of March the International Harvester Council (an employees' organization) prepared "Instructions to Patients', of which the clinic doctors had 1000 copies printed to be given out in the plant to those subscribing to the plan.

March 17th the doctors by letter refused to resign from the medical society denying all charges contained in the letter requesting their resignation. March 20th at a special meeting the Board of Directors formally preferred charges and directed that an answer be filed by March 27th. The doctors made answer and a hearing was had March 30th. At this hearing the accused were found guilty and expelled on three counts, viz.

1. Violation of Chapter XI, Sec. 3. By-laws of the State Society (conduct tending to defeat the purposes of the society).

2. Violation of Chapter III, Art. 1, Sec. 4, Principles of Medical Ethics (solicitation of patients, advertising).

3. Violation of Chapter III, Art. VI, (Reserved) Sec. 3, Principles of Medical Ethics (contract practice contrary to sound public policy).

Appeal from the action of the Board of Directors of the Medical Society of Milwaukee County to the Council of the State Medical Society of Wisconsin and from the decision of that Council approving the action of the county society to the Judicial Council of the American Medical Association was duly made and heard. The claim was made by the appellants before the Judicial Council that they had not had a fair trial before the Council of the State Medical Society of Wisconsin by reason of the fact that the Executive Secretary of the State Association had furnished legal

counsel at the trial of the appellants before the Board of Directors of the Medical Society of Milwaukee County, thus prejudicing the Council of the State Medical Society of Wisconsin against their cause on appeal. The Judicial Council finds no evidence supporting such claim. It believes that such employment was customary and only for the purpose of protection of both sides of controversies by assuring that procedure should be correct and each side protected in its rights. The counsel was discharged on the completion of the trial before the Board of Directors of the county society and had no connection with any further procedures.

The Judicial Council affirms the action of the Council of the State Medical Society of Wisconsin in respect to the charge of violation of Chapter III, Art. I, Sec. 4, of the Principles of Medical Ethics (solicitation of patients, advertising). The Board of Directors of the county society found these appellants guilty on this charge. The Council of the state society affirmed that decision. The Judicial Council finds no error in the interpretation of the Principles of Medical Ethics by either of these bodies, nor error in procedure.

The Judicial Council affirms the action of the Council of the State Medical Society of Wisconsin in respect to the charges of violation of Chapter III, Art. VI, (Revised) Sec. 3, Principles of Medical Ethics (contract practice contrary to sound public policy). The appellants claim that at the time charges were preferred against them (March 20, 1936) and they were expelled (March 30, 1936) they were not operating under the plan and engaging in contract practice; that their practice under the plan did not begin until April 1, at which time the clinic was opened; that therefore they were not guilty when and as charged.

The fact that no medical care had as yet been given at the time charges were preferred is not a reversible error in procedure. The appellants had abundant warning that the plan under which they proposed to operate was disapproved by the Board of Directors of the county society. They officially presented their plan to the board on February 8th, 1936. On February 14th, after disapproval of the plan, and after statements by the appellants to the Board of Directors that they would prosecute the plan even though disapproved, they were officially notified of disapproval

and request for their resignation was made which request was refused.

That at the time charges were preferred against them they had not as yet treated a patient under the plan is inconsequential. Certain preliminary preparations to treat patients necessarily had to be made before giving service but such preparations would not be made unless assurances were had by either written or verbal agreement or understanding which constituted a contract. The appellants were therefore engaged in contract practice from the time the agreement was made notwithstanding the fact that the preparations to treat patients had not been completed.

The Judicial Council is distinctly of the opinion that practice under the terms and conditions to which these appellants have agreed with the employees of the International Harvester Company constitutes a violation of Chapter III, Art. VI, (Revised) Sec. 3, of the Principles of Medical Ethics (contract practice contrary to sound public policy).

In respect to the charge that the appellants violated Chapter XI, Sec. 3, By-Laws of the State Medical Society of Wisconsin, the Judicial Council makes no pronouncement. It is not necessary that an accused shall be guilty on all charges made. If an accused is guilty on one or more major charges and no reversible error in the procedure of the trial is found, the Judicial Council will not interfere in the verdict pronounced by the county society and upheld by the state association. These appellants were found guilty by the Board of Directors of the Medical Society of Milwaukee County on two major charges of violation of the Principles of Medical Ethics of the American Medical Association, which action was sustained by the Council of the State Medical Society of Wisconsin. There was no reversible error in the proceedings.

The action of the Board of Directors of the Medical Society of Milwaukee County and of the Council of the State Medical Society of Wisconsin is approved."

Gov. Ex. 232 is a carbon copy of a letter written over the signature of the defendant Cutter and addressed to Dr. E. T. Thompson, Medical Superintendent, Mount Sinai Hospital, Milwaukee, Wisconsin, dated July 17, 1936.

"DEAR DR. THOMPSON:

It has come to our attention, through correspondence with the Medical Society of Milwaukee County, that certain

physicians have been expelled from that society through participation in an organization known as 'Milwaukee Medical Center.' It is also reported that certain of these same individuals continue as members of your attending staff with hospital privileges.

May we call your attention to the recent resolution passed by the House of Delegates of the American Medical Association, as follows:

'Resolved, That it is the opinion of the House of Delegates of the American Medical Association that physicians on the staffs of hospitals approved for intern training by the Council on Medical Education and Hospitals should be limited to members in good standing of their local county medical societies and that the House of Delegates requests the Council on Medical Education and Hospitals to take this under advisement.'

What possibility, if any, exists for observance of the principle laid down in this resolution?

Very truly yours,"

Gov. Ex. 233 is a letter from E. T. Thompson to William D. Cutter, M. D., Secretary, A. M. A., dated July 30, 1936:

"DEAR DR. CUTTER:

This letter will acknowledge with thanks your inquiry of July 17th, 1936, in regard to the controversy between the Milwaukee County Medical Society and the members of the Milwaukee Medical Center.

Mount Sinai Hospital has been forced, because of fear of itself being involved in legal complications, to take the stand that until this matter is adjudicated it is deemed advisable to take no drastic action.

With kind personal regards,

Very sincerely yours, E. T. Thompson."

Gov. Ex. 247 is a carbon copy of a letter written over the signature of defendant Cutter, to Dr. Edward T. Thompson, Superintendent, Mt. Sinai Hospital, Milwaukee, Wisconsin:

"DEAR DR. THOMPSON:

Please let me thank you for your letter of July 30. I will very greatly appreciate it if you will let me know whenever any action is taken.

Cordially yours,"

Gov. Ex. 244 is a carbon copy of a letter written over the signature of defendant Cutter dated October 24, 1936, addressed to Dr. Edward T. Thompson, Superintendent, Mt. Sinai Hospital, Milwaukee, Wisconsin:

"DEAR DR. THOMPSON:

This is in continuation of our previous correspondence about qualifications for staff membership in Mt. Sinai Hospital. We have been informed that the Council of the Wisconsin State Medical Society has upheld the action of the Milwaukee County Medical Society in expelling certain physicians for unethical behavior.

How does this action affect Mt. Sinai Hospital? Are all members on your staff in good standing with the Milwaukee County Medical Society or eligible for membership in that Society?

Very truly yours,"

Gov. Ex. 245 is a letter from Edward T. Thompson to William D. Cutter, M. D., Secretary of the A. M. A., Chicago, Illinois, dated Oct. 30, 1936:

"DEAR DR. CUTTER:

I have your letter of October 24th in regard to the action of the Council of the Wisconsin State Medical Society expelling certain physicians from the Milwaukee County Medical Society.

I beg to inform you that the situation at Mt. Sinai Hospital is still in status quo.

Very truly yours,"

Gov. Ex. 234 is a carbon copy of a letter over the signature of the defendant Cutter addressed to Dr. Edward T. Thompson, Superintendent, Mt. Sinai Hospital, Milwaukee, Wisconsin, dated November 27, 1936.

"DEAR DR. THOMPSON:

We have now received word from all hospitals in Milwaukee concerning the status of certain physicians who were recently expelled from the Milwaukee County Medical Society.

This matter will be reviewed by the Council at its next regular meeting in February following which we will be

in position to acquaint you with any further action or recommendation.

However, if any changes occur in the situation at Mt. Sinai Hospital we shall be very glad to have you keep us advised.

Very truly yours,"

Gov. Ex. 216 is a letter from Edward T. Thompson to William D. Cutter, M. D., American Medical Association, dated Oct. 22, 1937:

"DEAR DR. CUTTER:

Considerable time has elapsed since I communicated with you in regard to the status of the men associated with the Milwaukee Health Center. As you will recall, these men were expelled from the County Medical Society over a year and a half ago and at that time you wrote to me to ascertain the attitude of Mt. Sinai Hospital, which letter I answered under date of July 30, 1936.

We have heard nothing delinite in regard to this matter since that date and we are anxious to know where the matter stands at the present time. Has the action of the County Medical Society been upheld by the American Medical Association? If not, when will action be taken?

Mt. Sinai Hospital has always been, and I hope will always be, cooperative with organized medicine, and where we can be of assistance to the County Medical Society, we do not he tate to render such assistance. In fact I have on my desk at the present time a thank you letter from the secretary of the County Medical Society thanking the hospital for its participation in a preschool Round Up.

As I explained in previous correspondence, we have withheld decision in regard to physicians from the Milwaukee Health Center pending action by the American Medical Association.

I hope to be in Chicago on Tuesday, October 26th and would like to have the opportunity of discussing this matter with you.

With kind personal regards, I am,

Very truly yours, Edward T. Thompson, M. D."

Leading off from the next to the last paragraph of the letter, which reads, "I hope to be in Chicago on Tuesday, October 26th," is a pencil notation reading: "A. T. doesn't know if he called."

Gov. Ex. 217 is a carbon copy of a letter over the signature of the defendant Cutter addressed to Dr. Edward T. Thompson, Superintendent, Mt. Sinai Hospital, North 12th Street and West Kilborn Avenue, Milwaukee, Wisconsin, dated November 3, 1937:

"DEAR DR. THOMPSON:

The matters about which you inquire are still under discussion by the Judicial Council of the American Medical Association. As soon as a decision has been reached, we shall be sure to apprise you of the fact.

Very truly yours,"

Gov. Ex. 206 is a letter from Edward T. Thompson, M.D., to William D. Cutter, Secretary, on the letterhead of Mount Sinai Hospital, Milwaukee, dated April 6, 1938:

"DEAR DR. CUTTER:

I am writing you to ascertain whether or not there has been any change in the situation concerning compulsory County Medical Society membership on approved voluntary hospital staffs.

It has been several months since any correspondence has passed between us and since we are vitally interested in this matter, I would appreciate hearing from you in regard to it.

With kind personal regards, I am,

Very truly yours, Edward T. Thompson, M.D."

Gov. Ex. 207 is a carbon copy of a letter written over the signature of defendant Cutter addressed to Dr. Edward T. Thompson, Superintendent, Mt. Sinai Hospital, Milwaukee, Wisconsin:

"April 13, 1938.

DEAR DR. THOMPSON:

We have recently been informed that the Judicial Council of the American Medical Association has sustained the action of the Milwaukee County Medical Society in the matter of certain physicians recently expelled from society membership.

Accordingly, we shall be anxious to know what action Mt. Sinai Hospital is taking in respect to the resolution

of the House of Delegates pertaining to staff appointments in hospitals approved for intern training.

Very truly yours,"

Gov. Ex. 208 is a letter from Edward T. Thompson, Superintendent, addressed to the defendant Cutter, dated April 15, 1938:

"DEAR DR. CUTTER:

Thank you for your letter of April 13th. I note that you referred to the resolution of the House of Delegates pertaining to staff appointments in hospitals approved for interne training. In checking our correspondence I note under date of July 17th, 1936, you wrote as follows:

'May we call your attention to the recent resolution passed by the House of Delegates of the American Medical Association, as follows:

' "Resolved, That it is the opinion of the House of Delegates of the American Medical Association that physicians on the staffs of hospitals approved for interne training by the Council on Medical Education and Hospitals should be limited to members in good standing of their local county medical societies and that the House of Delegates requests the Council on Education and Hospitals to take this under advisement." '

We note particularly that this resolution passed by the House of Delegates was referred to the Council on Medical Education and Hospitals. We are wondering whether or not the Council on Medical Education and Hospitals has taken any definite stand in regard to this matter.

I would appreciate receiving this information as soon as possible in order that I may present the whole matter to the staff this next regular meeting.

Very truly yours, Edward T. Thompson, M.D."

Gov. Ex. 211 is a carbon copy of a letter over the signature of F. H. Arestad, M.D., of the AMA, addressed to Dr. Edward T. Thompson, Superintendent, Mount Sinai Hospital, Milwaukee, dated May 5, 1938:

"DEAR DOCTOR THOMPSON:

In the absence of Dr. William D. Cutter, I have been requested to reply to your letter of April 15. May I say first

of all that the American Medical Association does not have, nor does it assume, legal authority over any hospital and consequently does not presume to dictate how hospitals should conduct their affairs.

If, however, a hospital desires the endorsement of the Council, it should be willing to comply with the principles which the American Medical Association considers necessary. One of the basic requirements is that the medical staff should be composed of regular physicians properly qualified as to training, licensure and ethical standing.

When a hospital, therefore, employes physicians expelled from county medical society membership on the basis of unethical conduct it is obvious that the hospital's standing is involved not only from the point of view of intern training but also as regards basic registration. We are anxious, therefore, to be notified of any action taken by your executive board.

Yours very truly, F. H. Arestad, M.D."

Gov. Ex. 205 is a carbon copy of a letter over the signature of defendant Cutter addressed to Dr. Edward T. Thompson, Mt. Sinai Hospital, dated July 14, 1938:

"My dear Doctor Thompson:

In view of the fact that we have received no reply to our letter of May 5 and no notification of any action taken with respect to the employment of physicians expelled from the county medical society, we wish to inform you that we are recommending to the Council that Mount Sinai Hospital be removed from the approved intern list and also from the Register of the American Medical Association.

Very truly yours,"

Gov. Ex. 212 is a carbon copy of a letter over the signature of the defendant Cutter addressed to Dr. Ed T. Thompson, Medical Superintendent, Mt. Sinai Hospital, Milwaukee, Wisconsin, dated July 20, 1938:

"Dear Doctor Thompson:

With reference to your recent telephone inquiry we wish to state that in our opinion the action taken by the county medical society in expelling physicians for unethical practice constitutes an equal censure of other doctors participating in the same clinic enterprise.

Very truly yours,"

Gov. Ex. 213 is a letter from Edward T. Thompson, M. D., to William D. Cutter, Executive Secretary, AMA, dated July 21, 1938:

"DEAR DR. CUTTER:

This will inform you that on recommendation of the Executive Committee of the Staff of Mount Sinai Hospital and ratification by the Board of Directors of the Mount Sinai Hospital, Drs. A. L. Curtin and H. F. Wolters were removed from the active staff of Mount Sinai Hospital and courtesy privileges were withdrawn from these two men, as well as from Drs. Sullivan, Reuth and Dahlwig, in accord with your letter dated July 14th, 1938, and telephone conversation held with you on Friday, July 15th, 1938.

Very sincerly yours, Edward T. Thompson, M. D."

Gov. Ex. 214 is a letter from Edward T. Thompson, Superintendent, Mt. Sinai Hospital, to the defendant Cutter, dated July 21, 1938:

"DEAR DR. CUTTER:

To supplement our letter of July 21st and to conform with your letter of July 20th we wish to inform you that Dr. B. H. Oberembt has been removed from the courtesy staff of Mt. Sinai Hospital and courtesy privileges withdrawn.

Very truly yours, Edward T. Thompson."

Gov. Ex. 295 is a letter from M. W. Ireland to defendant Cutter, letter dated March 27, 1937, which bears the stamp "Council on Medical Education and Hospitals":

"MY DEAR CUTTER:

The facts below just came to my knowledge and I am going to drop them on your desk. It may be old stuff to you people around headquarters.

The early part of the week a couple of men from the Home Owners' Loan Corporation (H. O. L. C.) visited the Surgeon General of the Army to say that they wanted to obtain the services of a doctor to look out for the health of their personnel, which incidentally is quite large. After the consultation, the Surgeon General asked Colonel Glenn Jones, a retired medical officer, to visit these people. After this visit which lasted for a period of two or three hours, Jones tele-

phoned to the Surgeon General to the effect that this was nothing but an entering wedge to the establishment of state medicine and so far as he could make out the Twentieth Century Finance Corporation of New York City was going to pay the expenses of this so-called medical care for the personnel of the H. O. L. C. Needless to say, Jones and the Surgeon General are dropping it like a hot cake.

Just treat this information as though it blew in your window as I don't want to be the person to embarrass the Surgeon General if there should be any embarrassment. Some of the prominent doctors in Washington are going to be wised up.

With best wishes,

Faithfully yours, M. W. Ireland."

And a postscript, "Reynolds has it in the back of his head that maybe the two chaps from the H. O. L. C. thought they were in Parran's office when they were talking to him."

And on the bottom of this letter is this notation in pencil: "Copy sent to Dr. Woodward and Dr. Leland 3-31-37."

Gov. Ex. 236, is a carbon copy of a letter from the defendant Cutter to Dr. Daniel H. Kress, the Medical Director of Washington Sanitarium and Hospital, Takoma Park, Maryland, dated July 27, 1937:

"Dear Doctor Kress:

The enclosure is a copy of Dr. C. M. Peterson's notes on the present status of intern training at Washington Sanitarium and Hospital, which should be considered in conjunction with previous inspection reports which have been submitted to your institution.

Your particular attention and that of other members of your staff is called to the recommendations enumerated at the end of the statement. It would be a matter of interest to this office to learn whether you consider these recommendations acceptable and the possibility for their adoption in your educational program. Such a statement would be useful to the Council when it meets in October in order to determine whether internship approval should be continued or not.

May we also call your attention to a recent resolution adopted by the House of Delegates of the American Medical Association, the language of which is as follows:

'Resolved, That it is the opinion of the House of Delegates of the American Medical Association that physicians on the staffs of hospitals approved for intern training by the Council on Medical Education and Hospitals should be limited to members in good standing of their local county medical societies and that the House of Delegates requests the Council on Medical Education and Hospitals to take this under advisement.'

'Analysis of the staff is included in the report. What possibility, if any, exists for the observance of this recommendation at Washington Sanitarium and Hospital?

Very truly yours,"

Gov. Ex. 235, is a letter from Dr. Kress, the Medical Director of the Washington Sanitarium and Hospital, back to Dr. Cutter, dated September 28, 1937, bearing the stamp, "Council on Medical Education and Hospitals":

"DEAR DR. CUTTER:

The copy of the report of Dr. C. M. Peterson's inspection of the Washington Sanitarium and Hospital has been very carefully gone over by the staff of this institution. A committee was appointed to consider in detail the recommendations made in the summary of the report and the following plans have been worked out:

1. In order to provide for more careful supervision of the record work of the interns it was decided

(a) that daily the Record Librarian shall check the previous day's admissions for the recording of working impressions and report all delinquencies to the Medical Director to whom each physician shall be directly responsible.

(b) that the following regulation of the Board of Trustees of this institution shall be rigidly adhered to: 'If outside attending physicians do not furnish the complete history of their cases within 48 hours after admission, the intern shall be asked to secure same and to make routine physical examinations—this not to include pelvic examinations.'

(c) that hospital follow-up and instruction in differential diagnosis as it refers to the recorded working impressions shall be a part of the teaching program of each physician to whose service the intern is assigned.

2. and 3. In order to provide for better instruction in clinical and tissue pathology it was decided and has been arranged that there shall be weekly a clinical pathological conference conducted by Col. J. E. Ash, the pathologist, on Sunday morning from 11:30 to 12:00 o'clock, that the interns shall be required to be present at these conferences and the immediate staff shall be expected to attend.

4. In order to comply better with the recommendation regarding the definite assignments as listed on the report our rotating schedule contains the following:

a. Surgery—16 weeks, 10 days.

b. Medicine, Pediatrics—12 weeks, 10 days.

c. Obstetrics, Gynecology—4 weeks.

d. Night Duty (Obstetrics, Gynecology, Medicine, Pediatrics, Emergency Surgery) and Clinic—16 weeks, 10 days.

In regard to the resolution of the House of Delegates of the AMA, concerning the limiti[illegible] of physicians on the staffs of hospitals approved for int[illegible] a training to members in good standing of their local county medical societies, we would say that each application for staff appointment, which is form 561 of the Physicians' Record Company, calls for the medical societies to which the applicant belongs. Would this meet the requirement of the resolution? I believe that a satisfactory staff analysis could be made from our staff appointment file, for the average physician is quite careful in filling in the information desired on the application. Any recommendation or suggestion in regard to this will be greatly appreciated.

Sincerely yours, D. H. Kress, M.D."

Gov. Ex. 231 is a carbon copy of a letter from the defendant Cutter back to Dr. Kress, dated Oct. 5, 1937:

"Dear Dr. Kress:

We appreciate having your letter of September 28 which supplements Dr. Peterson's report on Washington Sanitarium and Hospital. It is a matter of satisfaction to learn that his suggestions have been found acceptable and certain changes have been made in keeping therewith.

As far as the resolution of the House of Delegates is concerned, the intention remains that of hospitals stipulating

membership in the county medical society as the basis for the assignment of hospital privileges. The great majority of hospitals with whom we have corresponded on this point have agreed that this is a good basis on which to operate, and in fact, many have anticipated this recommendation by a considerable length of time.

Very truly yours,"

Gov. Ex. 237 is a carbon copy of a letter from the defendant Cutter to Sister Mary Rodriquez, Registered Nurse, Superintendent of the Georgetown University Hospital, Washington, D. C., dated August 7, 1937:

"My Dear Sister:

The enclosure is a copy of Dr. C. N. Peterson's notes on the present status of intern training at Georgetown University Hospital together with comments relating to the application for approval of residencies in surgery. Will you be good enough to submit this statement to officers of the staff who are responsible for the maintenance of the educational services for house officers?

A number of recommendations are incorporated at the end of the report. It is a matter of interest to this office to learn whether in your opinion these suggestions can be adopted. In consequence, any supplementary information which you care to submit will be appreciated.

In respect to the residency in surgery, your attention is called to the components which need further attention before full approval can be assigned.

May we also call attention to a recent resolution adopted by the House of Delegates of the A.M.A., which is as follows:

'Resolved, That it is the opinion of the House of Delegates of the American Medical Association that physicians on the staffs of hospitals approved for intern training by the Council on Medical Education and Hospitals should be limited to members in good standing of their local county medical societies and that the House of Delegates requests the Council on Medical Education and Hospitals to take this under advisement.'

Analysis of the staff is included in the report. What possibility, if any, exists for the observance of this recommendation at Georgetown University Hospital?

Very truly yours,"

Gov. Ex. 238 is a letter from Sister Rodriquez, the Superintendent of Georgetown University Hospital, to the defendant Cutter, dated October 18, 1937:

"My dear Dr. Cutter:

Your letter of August 7th, together with Dr. Peterson's notes on the present status of interne training in the Georgetown University Hospital, have been presented at the October meeting of the Executive Staff. It gives me pleasure to report as follows:

All members of the Executive Staff are nominated and elected annually. The Executive Staff ruled at its last meeting that no physician shall be nominated or elected to any Staff of the hospital unless he is a member of his local Medical Society or the American Medical Association. Members who are already on the staffs, specified by you as not meeting these requirements will be notified to qualify within the year.

I. John R. Cavanagh, B. S., M. D., Associate Clinical Professor of medicine, was appointed Medical Director of the Dispensary on September 1st, with Frank S. Horvath, Associate Clinical Professor of Medicine, as Assistant. Dr. Cavanagh made the following assignments:

(a) The interne on Medicine I shall be in the clinic on Mondays, Wednesdays, and Fridays for the duration of the clinic period.

(b) The interne on Medicine II shall be in the clinic on Tuesdays, Thursdays, and Saturdays for the duration of the clinical period.

(c) The surgical interne shall be in the surgical clinic for the duration of the clinical period.

(d) The Medical Resident shall be in the clinic at least one day a week, so that he may follow up cases discharged from the hospital.

II. The Interne Committee is holding regular meetings and checking the record work of the internes. Residents are assigned one day each week to conduct record conferences with the internes, these conferences to be supervised by the chiefs of the respective departments."

Gov. Ex. 239 is a carbon copy of a letter from the defendant Cutter to Sister Margaret, Registered Nurse, Superintendent of Providence Hospital, dated August 21, 1937:

"My dear Sister:

The enclosure is a copy of Dr. C. M. Peterson's notes and recommendations referring to the opportunities available for interns at the Providence Hospital. Please refer this statement to the officers of the staff and members of the executive committee.

You will recognize that there are several factors that are not in conformity with the Council's regulations governing internship approval. It is a matter of great interest to this office, therefore, to learn whether the recommendations enumerated at the end of the report are acceptable or not. As matters stand now, we believe quite likely that when this statement is submitted to the Council at its regular meeting early in November, internship approval will be withdrawn. Similarly, the application for approval of a residency in surgery is held in abeyance pending adjustment of the present situation.

We also append for your interest a recent resolution of the House of Delegates of the American Medical Association:"

And then comes the resolution, the Mundt resolution, that has been read before.

"According to our analysis, there are six members of your staff who are not affiliated with any of the constituent societies of the American Medical Association.

Very truly yours,"

Gov. Ex. 240 is a letter from Sister Rosa, the Acting Superintendent of Providence Hospital, to the defendant Cutter dated August 27, 1937.

"Dear Sir:

No words can express my distress at the possibility of losing the American Medical Association's approbation of our Intern Training School. As requested, I presented the copy of Dr. Peterson's notes and recommendations to our Staff President, Dr. J. J. Mundell, and the matter will be discussed in detail at a special meeting of the Chiefs of our various services, to be called next Tuesday.

I assure you, the recommendations at the end of the Report are acceptable and will be given major consideration. In fact, many points brought into relief during Mr. Peterson's visit last June have been cared for satisfactorily. This is particularly true with regard to the patient's Records which have improved noticeably since July first.

You will receive very shortly, notification from our Staff concerning their desire and intention to cooperate wholeheartedly in placing our Internship on a platform that will meet the requirements of the American Medical Association. Nothing will be omitted either by the Staff, the Hospital, or the Superintendent to prevent what would prove a dire catastrophe to Providence Hospital, the loss of its accreditation for Intern Training.

I trust that when the Association will receive assurance concerning the adjustment of all that is considered inefficient by Dr. Peterson, the approval of a residence in surgery will be granted.

Lest any discrepancy should occur, please communicate with me freely on the subject of our standing, that proper reformatory measures may be put immediately into execution. Our desire is to give 100% co-operation to the demands of the Association, and I trust that if some of these readjustments take a little time for development, the Association will bear patiently with the unforeseen delay.

Sincerely yours, Sister Rosa, Acting Superintendent."

Gov. Ex. 230, is a carbon copy of a letter from the defendant Cutter to Sister Rosa, dated September 9, 1937:

"My Dear Sister:

We acknowledge with thanks your letter of August 27 which expresses in convincing terms your desire to cooperate with this Council in improving intern training at Providence Hospital according to suggestions recently submitted by Dr. C. M. Peterson.

It will be a matter of great interest to receive the communication from the staff which you mention in your letter.

Very truly yours,"

—Gov. Ex. 241 is a letter from Sister Rosa, the Acting Superintendent, and Dr. Claude C. Caylor, the Secretary,

of Providence Hospital, to the defendant Cutter, dated October 12, 1937:

"Dear Doctor Cutter:

We have had several meetings of the Executive Staff of Providence Hospital for the purpose of considering the recommendations in Dr. C. M. Peterson's report of his inspection of our Hospital on June 15, 1937.

The membership was furnished with copies of this report prior to the meetings in order that each might familiarize himself with its contents.

The Staff agreed that the report was well founded, and unanimously agreed to meet the suggestions of the Council; Committees were appointed for the purpose of planning suitable regulations for internes and in order to obtain more efficient records. These Committees have submitted comprehensive reports."

The recommendations of the Staff are eliminated as not relevant.

Gov. Ex. 242 is a carbon copy of a letter of the defendant Cutter to Dr. Walter A. Bloedorn, the medical director of George Washington University Hospital, Washington, D. C., August 23, 1937:

"Dear Dr. Bloedorn:

The enclosure is a copy of Dr. C. M. Peterson's report on the present status of intern training at George Washington University Hospital. We should like to have you refer this statement to those of your staff who are interested in and responsible for the internship program.

On the whole, statements are quite commendatory. However, a number of suggestions are incorporated at the end of the report, and it would be a matter of interest to this office to learn whether those suggestions are acceptable or not. They represent developments which, in our experience, have proved to be of real value elsewhere.

May we also call attention to a recent resolution adopted by the House of Delegates of the American Medical Association, the language of which is as follows:

Resolved, That it is the opinion of the House of Delegates of the American Medical Association that physicians on the staffs of hospitals approved for intern training by the

Council on Medical Education and Hospitals should be limited to members in good standing of their local county medical societies and that the House of Delegates requests the Council on Medical Education and Hospitals to take this under advisement.

Analysis of the staff is included in the report: What possibility, if any, exists for the observance of this recommendation at George Washington University Hospital?

Very truly yours,"

Gov. Ex. 215 is a letter from defendant Cutter to Dr. Bloedorn of George Washington University Hospital, dated Oct. 20, 1937:

"Dear Dr. Bloedorn:

May we call to your attention our letter of August 23, which accompanied a copy of Dr. C. M. Peterson's report with suggestions on internships at George Washington University Hospital.

Can you tell us at the present time whether his suggestions have been incorporated in your internship program?

Has any action been taken in respect to the resolution of the House of Delegates on the subject of staff membership contained in our letter of August 23?

Very truly yours,"

Gov. Ex. 243 is a letter from Dr. W. A. Bloedorn to Dr. Cutter, dated Nov. 4, 1937:

"Dear Dr. Cutter:

Thank you very much for forwarding us a copy of Dr. C. M. Peterson's report on the George Washington University Hospital.

I am very glad indeed to have his suggestions which, of course, are of real value.

A Staff Intern Committee has been organized to exercise supervision over the house officers training. The suggestion of the Journal Club for the house staff has been transmitted to the Intern Committee and arrangements will be made for convenient access to the University Medical Library next door.

With respect to the resolution of the House of Delegates on the subject of staff membership, we find that only nine

members of the total staff are not members of the local Medical Society and that of these nine, six are full time members of the Staff of St. Elizabeths Hospital in the Department of Psychiatry. As we do not have a psychiatric department in the George Washington University Hospital these members are used primarily in a teaching capacity for our medical students who go to St. Elizabeths Hospital, which as you know, is a Psychiatric institution. The problem then is reduced to three members of the clinical staff and I feel that this number will be reduced very shortly.

Very truly yours,"

Gov. Ex. 223 is a carbon copy of a letter from the defendant Cutter to Col. P. M. Ashburn, Superintendent, Columbia Hospital for Women, Washington, D. C., September 8, 1937:

"Dear Colonel Ashburn:

The enclosure is a copy of Dr. C. M. Peterson's notes on the present status of your educational service for residents in obstetrics-gynecology. Will you be good enough to transmit this statement to other members of the intern committee and the chiefs of service who are primarily responsible for the quality of experience which your house officers receive.

A number of recommendations have been attached to the report which, in our experience, have contributed to improving educational standards elsewhere. It is a matter of genuine interest therefore for this office to learn whether these suggestions are acceptable or not, preferably in advance of the next meeting of the Council which will occur early in November. We judge from certain remarks in the report that remedial measures have already been instituted, especially in relation to the record system.

May we also take this occasion to call your attention to the following resolution:

Resolved, That it is the opinion of the House of Delegates of the American Medical Association that physicians on the staffs of hospitals approved for intern training by the Council on Medical Education and Hospitals should be limited to members in good standing of their local county medical societies and that the House of Delegates requests the Council on Medical Education and Hospitals to take this under advisement.

What possibility, if any, exists for observance of this principle in your hospital?

Very truly yours,"

Gov. Ex. 227 is a letter from Dr. Cutter to Colonel Ashburn, Superintendent of Columbia Hospital for Women, Washington, D. C., dated November 3, 1937:

"DEAR COLONEL ASHBURN:

In continuation of our previous correspondence, are you in a position to report any action taken by your Board on the subjects covered in Dr. C. M. Peterson's report, especially the suggestions attached thereon.

This present inquiry also extends to the resolution which was quoted in our letter of September 8 relating to county society membership as a basis for hospital privileges.

Very truly yours,"

Gov. Ex. 228 is a letter from Colonel Ashburn, the Superintendent of Columbia Hospital for Women, here in Washington, to the defendant Cutter, dated November 5, 1937:

"MY DEAR DR. CUTTER:

Referring to your letter of November 3, 1937, I am glad to reply that Dr. Peterson's report of inspection of this hospital and the Medical Board's action and recommendation in regard thereto were submitted to the Executive Committee of the Board of Directors at its recent meeting, and both were accepted. The Committee agreed with the Medical Board in promising to put into effect the recommendations as it becomes possible, except that, in view of the hospital's financial condition and the exceptional medical library facilities in Washington, it did not wish to promise to improve the medical library of the hospital to any great extent.

As for demand that "physicians on the staffs of hospitals approved for intern training should be limited to members in good standing in their local county medical societies," it meets with the approval of the Medical Board as regards future appointments. So far as known, all present members of the staff of this hospital, except one, are members of the District Medical Society. The exception is a man of long service at the hospital and of high

standing in the profession. His reasons for not belonging to the Society are probably personal and nobody in the Medical Board suggested that any action be taken in his case.

Very sincerely yours, P. M. Ashburn, M. D., Superintendent."

Gov. Ex. 229 is a carbon copy of a letter from the defendant Cutter to Colonel Ashburn of the Columbia Hospital for Women, Washington, D. C., dated November 15, 1937:

"DEAR COLONEL ASHBURN:

Thank you very much for your letter of November 5. This completes our records as far as the recent inspection report is concerned. We shall be glad to turn over the complete file to the Council with favorable recommendations for continued approval of residencies in obstetrics-gynecology.

Very truly yours."

Gov. Ex. 36 read from to jury as follows:

(Excerpt)

"Minutes of the special meeting of the executive committee of the Medical Society of the District of Columbia, held Tuesday evening, June 1, 1937.

Dr. J. Lawn Thompson, Chairman, presiding.

Present: Drs. C. N. Chipman, A. J. Connolly, David Davis, William T. Gill, Jr., William P. Herbst, F. X. McGovern, Thomas E. Neill, H. H. Schonefeld, William M. Sprigg, Raymond T. Holden, Jr., R. Arthur Hooe, H. C. Macatee, Earl R. Templeton, C. B. Conklin, and Dr. J. R. Verbrycke, Jr., and Colonel Glenn I. Jones, by invitation.

The Chairman, in addressing the meeting, said that the reason for calling the special meeting was on account of certain serious situations that had developed. The Home Owners Loan Corporation, the Veterans' Bureau, the Soil Conservation Department and the Reconstruction Finance Corporation had already undertaken the development of a plan for medical care of their employees."

It was agreed between counsel, with the approval of the Court, that certain portions be omitted. Counsel will state

that he is omitting certain portions. If defendants request other portions, they will also be read.

"Dr. Thompson called on Dr. J. Russell Verbrycke, Jr., who has been very much interested in this subject.

Dr. Verbrycke said that he had heard of this plan and he had in his hand a prospectus, marked 'Confidential' in which details had been very well worked out.

* * * * * * *

He learned that they were opposed to the entire proposition of the prepayment plan.

The Chairman, Dr. Thompson, stated that we should look to the future; these plans all threaten the coming generation of physicians and their incomes.

Dr. H. C. Macatee was called upon by the chairman to state his views. He stated that some two Sundays ago he attended a meeting in Dr. William Gerry Morgan's office at which time consideration was given to this movement. He thought the medical profession had two weapons at hand, one, to forbid consultation with the physicians doing this type of work; the second, would be to withhold approval of any hospital that would take any cases or assist in the movement in any way.

Dr. R. Arthur Hooe at this time was given the privilege of the floor.

* * * * * * *

He said, 'Why has this all come about? Because people are not satisfied with what they are getting. Definitely and assuredly it is our fault.' He now made a motion to the effect that there would be a special meeting of the Society called for the coming Friday evening, at which time the membership would be informed of just what was taking place and they would be asked what they wanted to do in the premises. The motion was seconded.

* * * The Secretary stated that Dr. H. R. Brown had called him up, stating that he was going to be out of town for ten days attending a medical meeting. Then when he returned he would be at the service of the committee. He also stated that another doctor interested in the movement would be available. It was said that Dr. Brown certainly should be invited to a meeting and that information should be obtained.

* * * * * * *

(Confidential: For Private Circulation Only)

A Plan for a Cooperative Medical Service on a Periodic Payment Basis for Federal Employees and Their Families in Washington

Foreword

The problem of medical care and costs has become a serious one. A large proportion of our population does not obtain adequate medical care • • •.

Hospitalization insurance, of which several types exist in Washington, constitutes a partial solution of this problem. Thereby, people are enabled to provide in advance against the cost of hospitalization, and by so doing, many of low incomes who might otherwise have to ask for charity, are enabled to obtain hospital care, when they need it, in a self respecting manner. But this insurance is incomplete for it does not cover physicians', surgeons' and nurses' services and other items of importance in the medical bill. Some arrangement obviously is needed whereby individuals and families may pay a certain fixed charge monthly or annually, and receive in return medical care of whatever type and amount they require.

Proposed in the following pages is a plan by which the community of Federal Employees and their dependents in Washington may solve this problem,—if not completely, at least to the fullest extent possible by voluntary effort. The plan is tentative in nature. It is submitted to serve as a basis for discussion for individuals who may wish to constitute themselves a group to agree upon a particular plan and to take the steps necessary to establish it.

• • • The aim of this plan is to make available to Federal Employees in Washington, and to their families, adequate medical care, both preventive and curative; to provide this care at moderate cost; and to place that cost on a regular budgetable basis within the means of the group to be served. If federal employees are typical of the general population with equivalent incomes, many do not now obtain adequate medical care, especially preventive service and care in chronic conditions, while many others incur disastrous (sic) each year because of sickness costs. The provision of better care should promote health and well-being and reduce time lost from work because of illness. The plan should be of benefit not only to the employees and

their families, but also to the Government they serve."

Mr. Kelleher. And then I will omit a large portion of it which is intended to outline the "need".

"SCOPE OF THE PLAN

It is well to emphasize at the outset that the plan here proposed is potentially one of considerable magnitude. There are 119,000 federal employees in Washington. Should 30 percent avail themselves of the plan, the population served, including dependents, would probably number over 70,000 people. To provide care to this group would require the full-time services of 80 physicians. At a cost of $25 per person, the annual budget of this enterprise would amount to $1,750,000."

. . . . . .

It is estimated that approximately two-thirds of all families of federal employees in Washington have incomes between $1500 and $4500. The proposed plan, while it would be open to all, is designed primarily for families in this income range and for single employees with incomes over $1200.

BENEFITS AND COSTS

The level of costs in such a plan as is here proposed must be geared to what the group in question is accustomed to spend.

Various surveys show that families of the income range in question spend four to five per cent of income, on the average, for medical care. In other words, averaging the years of low cost with the years of high cost, a family with a yearly income of $1500 will spend approximately $67 a year for medical care; a family with an income of $2,000 will spend approximately $90 a year; one with an income of $3,000 will spend approximately $135. Most federal employees, like most of the general population, do not now receive fully adequate care, preventive and curative. The aim should be not to reduce present expenditures, but to regularize them and to provide for these expenditures a distinctly better level of medical care than they now purchase. The charges under the proposed plan have been drawn up with these considerations in mind."

Mr. Kelleher. Now, I am going to omit for the sake of speed a lot of detail about those figures.

"If a representative population enrolls, the amount available for provision of medical care at the specified rates, will be approximately $25 per person a year. This is more than is available under similar plans elsewhere giving a service of comparable items, * * *"

Mr. Kelleher. And references are made in the appendix to those other plans.

"and should be sufficient to provide an excellent quality of service. The rates proposed will make possible salaries to physicians ranging from $3,000 per year for the younger men up to $12,000 for the chief of medical staff. Those salaries will be sufficient to attract and hold first-rate men. The rates are set so as to provide a safe margin of income over outgo, bearing in mind the facts that in all plans of this sort, the expenses are greater during the first few years than afterwards, and that it is desirable to accumulate a small reserve to take care of any unusual demand for medical service such as might be caused by an epidemic. After the first 3 or 4 years, it should be possible to lower the rates or to expand the services.

Organization of the Proposed Plan

The plan should be cooperative in character, i.e., not for profit. It should be incorporated. A suitable name might be: Federal Employees Cooperative Medical Service, Inc. The organization should be controlled by a Board of Trustees, the members of which serve without pay. At the beginning the trustees will be the members of the committee which sponsors the plan and sets it in operation. Once the plan has been firmly established, the Trustees should be elected by the subscribers. Provision should be made for an advisory council representing the medical staff, and for another advisory committee representing the general medical profession of the District.

The executive head of the organization preferably should be a physician. His function would be to direct the organization as a whole and to serve as chief of medical staff. He would require the assistance of a lay manager who would run the business side of the enterprise. A physician who headed up the organization would need to be primarily an experienced and capable administrator, and a leader capable of inspiring, and supervising the physicians on his staff. Physicians with the proper administrative experience are

rare, and the right man will be difficult to find. If the right man cannot be found, the executive head of the organization may properly be a layman, in which case it would be necessary to have a separate chief of medical staff who should, of course, be a physician, and completely responsible for professional procedures and personnel."

Mr. Kelleher: I will omit some more of that detail and go on to this:

"To provide adequate care it is necessary to have one physician for every 800 to 900 enrolled persons. The smallest number of enrolled persons capable of supporting a well-rounded medical group is approximately 10,000. The medical staff in this case would be composed of, say, 10 physicians on full time and of a number of others (equivalent to 2 full-time men) engaged on a part-time or fee basis. As the number of subscribers increases, it will be possible to add full-time men in the less common specialties, and additional physicians in the more common specialties so that subscribers will have a choice among several men in each important field.

The pros and cons of provision of service by a staff of salaried physicians have been carefully considered. The disadvantage of salaried service is that it does not permit the patient to go to any physician he may select, but limits his choice to the physicians who are members of the staff. It is believed that this disadvantage is at a minimum in the case of the population of Federal employees, since many, being newcomers to the city, have not affiliations of long standing with physicians. In any case, the disadvantage is more apparent than real. Actually, the average layman generally chooses his physician on the basis of hearsay and is not qualified to judge competence. With a salaried staff, the patient receives care from a selected group of physicians, chosen by a chief of staff on the basis of their professional qualifications and competence. Furthermore, only in salaried, group practice is it possible to have a desirable degree of professional supervision of service and ready consultation of one physician with another. Finally, only on this basis can the economies flowing from organization be achieved.

The type of practice visualized here should be very attractive professionally to the physicians participating. It means a greater degree of cooperation and team work among them than is usual in 'solo' practice. They will have

readily at their disposal the aids, such as the X-ray and laboratory, necessary for the proper practice of medicine. They will be able to give their patients service of the type and extent required to achieve an optimum result, irrespective of the financial resources of the patient. The members of the staff will have annual vacations and will be able to get away for postgraduate study. At the salaries proposed, there will be no difficulty in obtaining a staff of absolutely first-rate physicians."

Mr. Kelleher: Then comes a great many figures.

"To establish the plan the following steps will be necessary.

(1) A small committee of individuals who are agreed on the necessity and soundness of the plan, and who will undertake to put it into operation, must be formed. These individuals must be willing and able to give considerable time to the purposes in hand.

(2) A sponsoring committee of 50 or 60 individuals should be formed. These individuals should be of two types: (a) individuals of prestige and standing in the government service, and (b) individuals who by virtue of positions as heads of employee organizations or associations, are able to lead and influence Federal employees.

(3) A certain sum of money to give initial working capital must be raised either by gifts or loans from a small number of people. The sum must be sufficient to set up an office, pay salaries and defray printing and office expenses during the interval between the launching of the plan and the collection of enrollment fees.

(4) The plan should be launched and publicly announced at a dinner or other suitable meeting, at which representatives of the press should be in attendance. Immediately thereafter all Federal employees should be informed of the plan through meetings and circulars, and should be asked whether they would be willing to participate.

(5) If the response is favorable, a campaign will start to obtain the necessary capital through advance payment of enrollment fees or subscription to shares. When the required funds are in hand the medical director will be engaged and as soon as he can obtain his staff and make the

necessary arrangements, the doors of the medical center will be opened, and the plan will commence to operate.

It will, of course, be desirable to obtain the fullest possible measure of cooperation from the members of the medical profession in the District of Columbia. After the plan is launched, the Medical Society of the District of Columbia will be invited to appoint a representative to sit with the committee which undertakes to establish the plan. It will also be requested to appoint a committee of several physicians to advise the medical director of the plan on all relevant matters. The intention will be to solicit the advice and cooperation of the local medical society and to work with it to the fullest degree possible.

The present plan will not supplant or injure the existing Group Hospitalization plan. That plan is now serving only a fraction of those who need it. Some individuals will want the complete coverage afforded by the plan here set forth; others will want simply the coverage afforded by Group Hospitalization. The city is large enough for both plans, and in the long run, each will aid the other."

Gov. Ex. 36 read from to jury as follows:

(Excerpt)

"Minutes of the special meeting of the executive committee of the Medical Society of the District of Columbia, June 21, 1937.

Dr. William M. Sprigg presiding.

Present: Drs. Daniel L. Borden, C. N. Chipman, A. J. B. Connolly, William T. Gill, Jr., A. C. Grau, William P. Herbst, Jr., Raymond T. Holden, Jr., R. Arthur Hooe, Joseph Horgan, Oscar B. Hunter, H. C. Macatee, Thomas E. Neill, Sterling Ruffin, William M. Sprigg, Earl R. Templeton, J. Lawn Thompson, C. B. Conklin, and Dr. J. Russell Verbrycke, Jr., by invitation."

Mr. Magee. Will you read the paragraph concerning the absence of the chairman and the vice-chairman?

"In the absence of the chairman and the vice-chairman the secretary announced that the first order of business would be the nomination of a temporary chairman to serve until the chairman appeared.

Upon motion, duly seconded and adopted, Dr. William M. Sprigg was made temporary chairman."

. . . . . .

"Dr. Verbrycke at this point read a detailed plan that had been organized by the Subcommittee as an acceptable substitute for the Cooperative Medical Service Plan.

Dr. Verbrycke stated that he had sent by air mail an outline of the Cooperative Medical Service Plan to Dr. W. C. Woodward and requested that Dr. Woodward meet with him in Washington. Every effort was made by Dr. Woodward to ascertain who was financing the project. He met with little success with his inquiry. It was stated that Dr. H. C. Macatee, at the meeting of the House of Delegates, in Atlantic City, outlined the plan that was all ready for trial in Washington. It seemed as though the attitude was 'We are sorry; we have no solution; you work it out'.

. . . . . .

The chairman at this point addressed the meeting. He called attention to the fact that he had one son who had just completed his medical course; another son was just entering the medical school. This represented a tremendous personal investment, the usefulness of which he thought would be greatly curtailed by the installation of such plan as Mr. Russell contemplated fostering on the medical profession in Washington.

. . . . . .

The secretary made a motion that a special meeting of the executive committee be held on the evening of Wednesday, June 23rd, and that Dr. Henry Rolf Brown be informed that his presence would be welcomed, also the presence of any of his conferees. This motion was seconded, and in the discussion the question of executive session on that evening was brought up.

. . . . . .

Dr. Macatee, in summary, stated that two ways available in combatting or controlling any such scheme as recently proposed in Washington might probably be handled (1) through disciplining our own members who undertook to participate, and (2) the possibility of doing something to recalcitrant hospitals through pressure on their staffs. He

mentioned the various cooperative plans that were now in force."

The meeting was then adjourned.

I now read from "Report of the Committee on Group Medical Service Plan," which is appended to the minutes:

"The inception of Cooperative Medical Service plans with a prepaid payment basis for federal employees and their families in Washington forces the Medical Society to take a definite stand either for or against. This decision must be made upon full consideration of various advantages and disadvantages of this service not to the doctor but to the patient since the medical profession has always stood four-square for principles looking toward improvement of public health albeit at the expense of diminution of its own income. This unselfish attitude is well exemplified by the untiring efforts expended by the profession in furtherance of the prevention of disease and the concept that it is unethical to patent or use for private gain any new discovery for the alleviation of illness. Quite naturally, however, the organized profession is insisting upon not being forced by misguided or unfair competition to give up any of its rightful prerogatives.

* * * * * * *

The aim of Cooperative Medical Service is to supply complete medical care, including professional care and hospitalization to all participants at a cost which all can afford through the distribution of such cost over large groups whereby those who are lucky enough not to need the benefits bear their part of the expense of caring for those who otherwise would be subjected to perhaps an unbearable or impossible burden which is imposed by the highly developed and the necessary expensive modern medicine.

* * * * * * *

The profession of the District of Columbia has gone far toward the solution of the problem by its creation of the Medical Dental Service Bureau, which permits the budgeting of all expenses incident to an illness after the blow has struck, but evidently it has not gone far enough or the need for some plan such as the Cooperative would not have been felt."

Mr. Kelleher. I omit the next paragraph.
Mr. Leahy. What paragraph are you on now?
Mr. Kelleher. I am at page 2.

"The spread of costs with resultant benefit of adequate care to the hard-hit individual constitutes the one advantage of cooperative medical care and it is unquestionably a large one and worthy of deep consideration."

Mr. Kelleher: I omit——
Mr. Leahy: No, read on.

"On the other hand, possible disadvantages, some of which may be said to be even likely under the proposed setup may be enumerated as follows:

1. The absence of patient-personal physician relationship so necessary in many conditions.

2. The inability of the patient to have free choice of physician.

3. The danger of deterioration of service when competitive factors are removed through salaried personnel.

4. The danger of relative incompetence of personnel through appointment by favoritism or otherwise rather than on a strictly merit basis.

5. The inability of the patient to have always the best care for a certain condition if the specialist does not happen to belong to that group.

6. The usurpation of the time and money of the group by some who think that they are ill or enjoy poor health constantly at the expense of some of the more needy.

7. Actual statistics prove that group practice costs the individual patient more than private practice.

8. The possibility that group support will be enthusiastic at the beginning but will wane in time with gradual failures.

Much can be said for these disadvantages to offset in theory the advantage to the patient of the group plan.

A review will now be made of the history of some of the similar plans which have already had a thorough trial.

For many years Quintas have been operating in Cuba, where for a moderate fee per month all diagnostic, dispen-

sary, hospital and home medical and nursing care have been supplied with reputed satisfaction to both patients and the profession.

The Union Health Center in New York City has rendered service, since 1913, to its members whose incomes are from $600 to $1200 with clinics even in such specialties as allergy, cardiography, et cetera, with apparently a high degree of success.

There are some 150 group clinics throughout the country which supply prepaid medical care, but the outstanding example is the Ross-Loos Group of Los Angeles, and this organization is admittedly a success, both from the standpoint of the patients and the staff.

Trinity Hospital, in Little Rock, Arkansas, owned by a private group of physicians, gives medical service prepaid to an increasingly large clientele.

County medical societies have within the past several years inaugurated their own prepaid medical service bureaus in several parts of Washington and Oregon with free choice of physicians. Varying results are recorded.

In Fulton County, Georgia, 65 per cent of the County Medical Society have placed their names on the roster of their bureau. The only reported difficulty has been tardiness in paying the professional fees necessitated by lack of capital in the beginning.

In summary, it may be said that few of the prepaid medical setups have been without criticism but that many desirable features have been supplied and it is generally conceded that people of a class or group, who are unable to take care of themselves individually, have a right to band together if their aims can be accomplished collectively and provided contracts are entered into which are fair to all parties concerned.

Before dissecting the setup of the proposed Cooperative Medical Service Plan for Federal Employees, it might be well to quote the section of the Principles of Medical Ethics of the American Medical Association which will show where the doctor fits into the picture:"

And the section is quoted as follows:

"'Contract practice per se is not unethical. However, certain features or conditions if present make a contract unethical, among which are: 1. When there is solicitation of patients, directly or indirectly. 2. When there is under-

bidding to secure the contract. 3. When the compensation is inadequate to assure good medical service. 4. When there is interference with reasonable competition in a community. 5. When free choice of a physician is prevented. 6. When the conditions of employment make it impossible to render adequate service to the patients. 7. When the contract because of any of its provisions or practical results is contrary to sound public policy.'

It becomes evident that the plan proposed containing at least 4 of the objections raised by the American Medical Association, and, therefore, being stamped as unethical according to these standards, no member of the Medical Society can have a part in it as at present constituted, and still be a member of the Medical Society or of the American Medical Association.

The proposal bespeaks the wish that the approval of the Medical Society be accorded and that it have an active part in an advisory capacity. It would not appear that the aims of the groups and the features objectionable to the Medical Society are too divergent to be reconciled.

1. Under no condition can the Medical Society approve any plan which does not allow free choice of physicians so that it cannot approve of salaried fulltime personnel—Violation of conditions 4 and 5 of A. M. A.

2. The proposal to set up a local medical center with cooperatively controlled hospital, etc., is unquestionably 'contrary to sound public policy.' Not only would members be denied hospitalization of their own choice but present community hospitals, which have done their part through trying times in taking care of the public, would be pushed to the wall and be reduced to charity institutions or have to entirely disband.

3. The instructions for launching cooperative medical service groups contains the following significant paragraphs:

'It will of course be desirable to obtain the fullest possible measure of cooperation from the members of the medical profession in the District of Columbia. After the plan is launched, the Medical Society of the District will be invited to appoint a representative to sit with the committee which undertakes to establish the plan. It will also be requested to appoint a committee of several physicians

to advise the medical director of the plan on all relevant matters. The intention will be to solicit the advice and cooperation of the local medical society and to work with it to the fullest degree possible.'

Now, the important thing for the Medical Society to insist upon, first and foremost, is that it not be consulted after the plan is launched, but that it be consulted first and have a part in drawing up the charter and by-laws to conform with necessary standards of ethics.

In fact, we propose that the Medical Society go further than this and that it formulate at this time as nearly an ideal plan as is possible with the endeavor to avoid all the objectionable features.

Briefly, our plan would contemplate a director, or board of several directors, from the Medical Society, who would serve as a central body to have supervision of the launching and future conduct of all cooperative groups to see that all ethical standards are complied with and to act as the final board of arbiters in all cases of dispute. This central board should be salaried and paid by assessments from the various cooperative groups.

Groups of 10,000, taken as an arbitrary unit, can be organized more or less after the pattern advised by previous planners, except that the only salaried doctor shall be the medical director of the group who shall control all medical and business activities of the group and who shall act as an admitting officer and advise patients as to their general course of procedure, but who shall not himself administer treatment. Each group shall be self-governing and independent, subject only to the general rules of the central directors. Instead of salaried personnel for diagnosis and treatment the patient shall have free choice of physician from a panel of the medical society members, all of whom shall be eligible to register upon accepting the rules and regulations and a standard fee table, after adoption.

Many details would have to be worked out in the matter of regulations, et cetera, and the above plan gives the basic set-up only.

It is moved that the executive committee call a special meeting of the Society for the consideration of the question, with the recommendation that a committee proceed with details of a complete set-up which, after adoption

by the Society, shall be publicized and submitted to all interested parties."

Gov. Ex. 37 read from to jury as follows:

"Minutes of the special meeting of the executive committee of the Medical Society of the District of Columbia, held Thursday evening, June 24, 1937, 8:00 p.m., Library.

Dr. J. Lawn Thompson, Chairman, presiding.

Present: Drs. A. B. Bennett, Daniel L. Borden, Charles B. Campbell, C. N. Chipman, A. J. B. Connolly, David Davis, William T. Gill, Jr., William P. Herbst, Jr., Raymond T. Holden, Jr., R. Arthur Hooe, Joseph Horgan, H. C. Macatee, F. X. McGovern, Thomas E. Neill, Sterling E. Ruffin, H. H. Schoenfeld, William M. Sprigg, Earl R. Templeton, C. B. Conklin, members of the Executive Committee.

By invitation: Drs. Thomas A. Groover, J. Russell Verbrycke, Jr., Daniel F. Lynch (Secretary, D. C. Dental Society); Dr. Henry Rolf Brown, Mr. Wm. F. Penniman, and Mr. Zimmerman.

The chairman stated that the purpose of the special committee was to consider the Cooperative Medical Service plan as proposed to provide medical care for federal employees and their families. He called on Dr. Henry R. Brown to outline the procedure.

Dr. Brown stated that he was not chairman of the committee. He would suggest that Mr. Penniman, who is the president of the organization, be asked to open the question. Dr. Brown added that he would be available to answer any medical questions that might be asked.

The Chairman, addressing Mr. Penniman: 'Would you be good enough to state your method of procedure as to what your proposition is in regard to the Government employees?'

Mr. Penniman: 'I am very happy to be here this evening to give you the information that I think you are entitled to, and to correct any misinformation that we have under consideration with the Home Owner's Loan Corporation. I was very much relieved when I said to Dr. Conklin a moment ago that we felt you had come up to prepare the operating room, but I find it is all right.

'The organization of which I am its President is known as the Group Health Association. It is a body composed solely and entirely of the employees of the Home Owner's

Loan Corporation and the affiliated agencies of the Federal Home Loan Bank Board. In addition to the Home Owner's Loan Corporation, which because of its size many of you gentlemen have heard a good deal about it, there are other agencies such as the Federal Home Loan Bank Board, Federal Savings and Loan Association, Federal Savings and Loan Insurance Corporation. There are about 1,700 employees under these 4 agencies in Washington.

We have from time to time made something of a study of the health conditions of the employees of these agencies of which the Home Owner's Loan Corporation is perhaps the largest. We have found, as a result of this study, that a great many of the employees whose salaries are in the lower brackets have not been able to take advantage of the medical service that they are entitled to or that they should have. We have found that the cost to the corporation as a result of sick leave has been heavy. Looking deeper into that we found a great many of them, young men and young women who have gotten married, that have illness. They are not indigent because they have employment and receive income. That income is about all they have to live off. It was proposed and the subject placed before the employees as to whether or not they should be interested in an organization whereby for a small monthly sum, payable in dues, within their ability to pay they could be provided with full medical services. The answer was very enthusiastic in the affirmative and encouraged us to go ahead with this movement. They have obtained a charter. We have already prepared by-laws, elected a board of trustees and officers. We have selected Dr. Brown as the Medical Director.

Now it is proposed for this small monthly sum that they are to have everything that we can give them through this association in the way of medical service. The approach to it is on the lines of preventive medicine to the extent that we want these people who are members of this association to take full advantages of the services that it renders. We want them to be in a position to go to the medical center every day, every week, every month, and certainly once a year for physical examination. We believe that by so doing a careful physical checkup that oftentimes those who salaries are small and with some illness they perhaps would attempt to take care of it themselves. Often-

times it runs into a situation that becomes serious, we believe. It could have been corrected had they attended.

We are impressed with this fact—that the advancement in medical research has been as outstanding, no doubt, as in the automotive industry. We know more about the automotive industry because every magazine, every periodical and radio broadcast has something to tell us about the advance in the automotive industry. It has been just as great in medical research. The great trouble, gentlemen, is so many people are not taking advantage of it, and they don't take advantage until they are flat or down and have to call on the doctor. By this preventive approach we are in a position to take care of our people and the efficiency of their work is increasing very materially by being in better health, better state of mind, no bills to worry them at the end of an illness.

I might say our medical service provides for hospitalization, provides for surgical, provides for obstetrics, provides for all of these services that we can give them within our medical center. It is proposed in our clinic to have modern equipment. It is proposed to have a staff of physicians, technicians of the highest type that can be selected, under the direction of Dr. Brown, to observe in every respect ethical medicine in the highest degree.

I might say that some thought that this is a governmental institution. It is not a governmental institution at all. It is a private association, composed solely and entirely supported, managed and controlled by the employees themselves. It is localized to the District of Columbia.

I will be glad to answer any questions.'

The Secretary, 'When and where is this clinic going to be erected?'

Mr. Penniman: 'It is not going to be erected at all. We are not contemplating building anything, but it is contemplated to house it in a building centrally located and within easy access of transportation.'

Q. In a Government building?

Mr. Penniman: Oh, no, the Government has nothing whatsoever to do with this.

Q. Have you selected your location?

Mr. Penniman: No, we haven't. We would be glad to have some suggestions.

Q. How about your personnel?

Mr. Penniman: We thought we had done a pretty good job when we selected Dr. Brown and we stopped there, because we are laymen. The selection of the staff and technicians we turned over to Dr. Brown. Dr. Brown perhaps can answer that question.

The Chairman: We would appreciate it, Dr. Brown, if you would say something about the staff or medical aspect.

Dr. Brown: The selection of the personnel is now in order. We are interviewing and we have contacted quite a number of men. No actual selections have yet been made of the medical or technician personnel. We expect to procure the services of men who are qualified in the several fields of medicine; men who have practiced the highest standards of medicine obtainable. We will be highly ethical in our practice in every sense. The equipment is modern equipment for diagnostic purposes and treatment purposes. We will only treat cases that will come to the clinic; hospital cases will be treated at the hospital.

The Secretary: Will the staff be full-time salaried men?

Dr. Brown: Full-time salaried men. It is a non-profit organization, for the benefit of the Association.

The Chairman: There are four units in the making—the Home Owner's Loan Corporation, Soil Conservation Service, Reconstruction Finance Corporation and one other.

Dr. Brown: We have no connection with any other association.

The Chairman: Will it be compulsory for these individuals to join?

Dr. Brown: Entirely voluntary.

Mr. Penniman: I would like to state that under our membership plan it is entirely voluntary on the part of the members to come in if they see the benefits of it; to resign any time they want to; to accept the services of our clinic. They may supplement it with their own doctor. They may take a portion of this service and maintain their doctor if they wish, and they may not come in at all.

The Chairman: Are these doctors that will be associated with the Association allowed to practice on the outside?

Dr. Brown: Full time. No outside practice.

Dr. T. A. Groover: How many do you expect to have on your staff?

Dr. Brown: To start with, four or five; perhaps more, depending on the needs.

Dr. A. B. Bennett: The membership can't be more than 1700?

Mr. Penniman: There is the individual membership for those who are single; family membership, which entitles the member and his already dependent members of his family to the benefits.

Dr. R. Arthur Hooe: May I burden you with two or three questions, gentlemen? You referred to the choice of the physicians to render the services and you use the personal pronoun 'we'. I am wondering from what the president just told us if that is not the 'Lindbergh we'. Does not that really mean you are choosing, and that you probably speak of it as 'we' in personal modesty?

Dr. Brown answered in the affirmative.

Dr. Hooe: Would you tell us, next, for the information of the committee, how you are guided in the choice of those physicians. I am trying to place myself in your position, with the same function to perform and wondering just how I would proceed in spite of the fact that I believe I am fairly well acquainted with the medical profession in the District of Columbia and in a pretty good position to choose from among the profession. Will you tell us how you proceed?

Dr. Brown: By personal interviews with the men and qualifications and evidence that he can point to giving us qualifications, his associations and background. It is an unknown quantity. We tell them we feel you are qualified to perform a certain duty. After I have had you on my staff six weeks I find you are not worth anything at all—if not, out you go.

The Chairman: Do they make application or are they requested?

Dr. Brown: I have interviewed quite a number of doctors who have sufficient qualifications to meet our demands.

The Chairman: The definite policy eventually would be of a man applying for such a position?

Dr. Brown: There is no objection to a man applying if he could back up his qualification; then we would give it consideration.

Dr. C. N. Chipman: You referred to the people coming to the clinic that if you could not take care of them in the clinic you would send them to the hospital.

Dr. Brown: I said that cases that were purely hospital cases would be referred to the hospital; we would only treat in the clinic those who are able to come to the clinic.

Dr. Chipman: Isn't it your intention to give complete medical care?

Dr. Brown: Yes, we will give treatment in the homes if they are not able to come to the clinic.

Dr. Chipman: It is your intention to give complete medical care?

Dr. Brown: We expect to have our staff give complete medical care.

Dr. Hooe: Do you think this corporation could function with any degree of satisfaction?

Dr. Brown: We have the experience of 250 clinics in the United States. We feel we can do what they can do.

Dr. Hooe: Do you think this corporation could function to any degree of satisfaction with the hospitalization being left out of the equation?

Dr. Brown: I don't see how we could complete treatment if the patient needed hospitalization and we dropped him there. It should be followed through. I don't think it could be done. The treatment is nothing more or less than a patient coming to your own office. He comes to you and he is well physically and mentally. You go over the case and you examine him and you dispose of him according to your judgment. If he should go to the hospital you send him. If you can treat him in your office you treat him.

. . . . . .

Dr. Groover: Counting the families which you are going to look after, how many individuals did you anticipate?

Dr. Brown: According to statistics every 100 would have 125 in the family.

Dr. Groover: That is how many you would have.

The Chairman: It has been rumored that the project has been financed by the Federal Housing.

Dr. Brown: I have had come back to me a great many rumors—one, that this covers proposed state medicine, etc. Those are rumors that gather momentum as they go. You know the old saying 'A lie travels around the world while the truth is putting his boots on.' The medicine that we practice is the same as you in your individual capacities. Three or four doctors work together; you have diagnostic

facilities—that is all we propose, nothing more, nothing less.

Dr. Horgan: How has the inauguration of this set-up been financed?

Dr. Brown: I will leave that to the President to answer. I am interested in the medical.

The Chairman asked Mr. Zimmerman if he had anything to add.

Mr. Zimmerman: I am glad to be here and listen to the questions that are asked. They give an accurate and correct picture of what is undertaken.

The Secretary: I would like to ask Mr. Penniman a few questions; first I would like to know Mr. Penniman's initials; second, if it is not too personal or inquisitive, is he connected with the United States Government?

Mr. Penniman: My initials are Wm. F. In answer to your second question I am an employee of the Home Owner's Loan Corporation.

The Secretary: Official?

Mr. Penniman: Yes.

The Secretary: High official?

Mr. Penniman: I don't know how high you would call me.

Dr. Groover: May I ask a question? What do you estimate that your gross income from contributions would be?

Mr. Penniman: By contributions, you mean payment of dues. I should say, doctor, in rough, round figures, around $50,000.00.

Dr. Horgan: How old is this?

Mr. Penniman: It is still on the bottle.

Dr. Horgan: Could you answer the question I asked Dr. Brown? How has the inauguration of this undertaking been financed or subsidized?

Mr. Penniman: In answer to your question—the plan, as I stated a moment ago, is to be supported in the main by the membership dues. It has been fixed at a figure which we believe is within the income of those of the smaller bracket to pay. There is one question in connection with that perhaps you need to know. We have made a study of the situation and find that the cost of the Home Owner's Loan Corporation sick leave has been very expensive for services rendered to the Home Owner's Loan Corporation and affiliated agencies in the examination of applicants for employment for services to be rendered to the Home Owner's

Loan Corporation; in the examination of its employees, that the Home Owner's Loan Corporation may get more efficient work out of these employees; from the constant observation of health conditions among employees generally from which the Home Owner's Loan Corporation will be a direct beneficiary. The Home Owner's Loan Corporation has appropriated a sum, an initial sum for 2 years to start this.

Dr. Groover: You speak about the lower income brackets. What are your limits as to membership?

Mr. Penniman: No restrictions at all.

Dr. Groover: You take high or low income employees?

Mr. Penniman: If they are eligible employees of the corporation they are eligible to join.

Dr. W. M. Sprigg: Is this not for any government employee?

Mr. Penniman: No, it is positively not. It is confined solely to the employees of this agency.

The Chairman informed Dr. Sprigg (who was not present when the meeting opened) that this was one particular unit represented here tonight, speaking for itself only.

Mr. Penniman: We know nothing about the others. We are not connected with them whatsoever. Speaking of the income brackets, about 80 per cent of the incomes will average $2,400 and below.

The Chairman: You say these men are full-time men. How are you going to prevent them from practicing outside? In all government departments there are some doctors who practice at night— we call them sundowners.

Dr. Brown: I wish to take exception, not all government departments. I have been with the Veterans Administration for the last 18 years. I don't know of a man now in the administration who is practicing outside. In our organization if we find a man violating his obligation to us by practicing outside, he will no longer be with us.

The Chairman: That did not obtain in the Veterans Administration?

Dr. Brown: We have more men in the Veterans Administration than the others combined.

Dr. Groover: Do you make a contract with your beneficiaries?

Mr. Penniman: Not a contract. It would be an application for membership. That application is passed upon by the Board of Trustees just as any other organization. If

they are eligible and are entitled to the benefits, they are elected—if not, they are denied.

Dr. Groover: What is your criteria for accepting?

Mr. Penniman: The criteria is in the first group those who are members. Those who are not now members, there is provision in the By-Laws that they cannot become members for 30 days; their dependents cannot become eligible for services for 90 days.

Q. You do not make any guarantee either as to quantity or quality?

Dr. Brown: We make an agreement that we will give them the very best medical care.

Dr. Groover: That is the contract?

Dr. Brown: That is the agreement.

Mr. Penniman: It is just like joining a club. If you are not satisfied with the services you resign. If they are not satisfied they are entitled to withdraw at any time.

Dr. Hooe: Would you mind telling us, if you will—give us an illustration of what would disqualify new members for the benefits of this plan?

Mr. Penniman: I think one of the things that would disqualify them would be an abuse of the service. Any attempt to try and bring into the Association those who are not eligible would disqualify them and they would be dismissed.

Dr. Hooe: Before they are admitted?

Mr. Penniman: That is after they are in.

Dr. Hooe: How about before they are applying?

Mr. Penniman: I don't know anything that would particularly disqualify them with the exception that upon examination it is found that they have tuberculosis, and perhaps have to be confined to a sanatorium—we are not going to take care of these people for the length of time they will be confined. Things are in our by-laws that we do not go into.

Dr. Hooe: How about the venereal diseases?

Dr. Brown: We will treat venereal diseases with an extra charge of 50 cents per treatment.

The Chairman: Dr. Thompson, inquired as to the medical personnel.

Dr. Brown: The medical personnel will probably be from four to six men.

The Secretary: With those four or six men, would they include the various specialties? I understand you are go-

ing to give these people the very best medical care. I would think it would be presumptive that you would use these six or eight men to take care of the general work.

Dr. Brown: Consultants on the outside would take care of any special work.

Dr. Conklin: Would they be full time?

Dr. Brown: No.

Dr. Conklin: You would have a contract with the specialist?

Dr. Brown: Yes.

Dr. Conklin: In all fields?

Dr. Brown: Per unit basis.

Dr. Groover: You drop a member for nonpayment of dues?

Dr. Brown: I think those are matters that concern us and not so much the Society. They are our problem and not your problem.

Dr. Groover: It is a problem that will naturally interest us, because if you do that——

Dr. Brown (Interrupting): A person is eligible who keeps his dues up.

Dr. Groover: If he drops out who is going to look after him?

Dr. Brown: Through the same source as he gets it now.

Mr. Penniman: If he is not able to meet the monthly payments to this corporation he will come to you. He will be just the usual charity case.

Mr. Zimmerman: I think it is fair to say that if you had an employee whose financial condition were such, that an arrangement could be made to carry him along until he could pay.

Dr. Groover: There ought to be. He would automatically be thrown on the medical profession on the outside.

Mr. Zimmerman: If we don't pay dues at the club we don't play golf. It is not the same way here.

Dr. Brown: Every doctor would understand that question perfectly. We would be as human as the average practitioner of medicine.

Dr. Groover: The question has many implications. I will cite some of them, by personal illustration: Some ten years ago I happened to be down in Havana and I went out of a hotel and asked a hackman to take me to the best hospital in Havana. Said he, 'I will take you to the Club Hospital.' He drove me out to the hospital and

I was quite impressed. It was a nice hospital. I looked around, visited the X-ray Department, etc., and I asked, 'How is this supported?' He said, 'Well, the members of this club pay $2.00 a month dues.' I said, 'How many members have you?' He said, 'We have upwards of 50,000 members.' With a little rapid calculation that is $250,000 a year. I thought nothing more about it, but as time went on you see the position we were in. About all the outside doctor would have to do would be to take care of the indigent and the riff-raff and the members who had been dropped by the club. Now that, you see, left them in a plenty bad way. All they had to do was to look after indigent groups. That did not go on. I don't know all of the facts. I have been reliably informed that that very situation was largely instrumental in developing this last revolution they had in Cuba. The doctors who were on the outside were about to starve to death and to use a popular expression, they were on a sit-down strike. Many of them left Cuba and came over to Miami. I merely mention that to recall to your minds that this sort of thing has implications.

Dr. Brown: We have no indigents in employment.

Dr. Groover: Your people may become indigent.

Dr. Brown: Then it becomes the matter of the state.

Dr. Groover: I see, but as a matter of fact the state don't take care of indigent.

Dr. Brown: We are not going to drop a man or let a man suffer for lack of care if he is a member of our group. That is a humanitarian principle that you apply in your own practice.

The Chairman: You spoke about tuberculosis. If an employee had active tuberculosis he would be doubly in need of care. He would not be allowed to work in the Government—he would be dropped from the group.

Dr. Brown: We provide this to the point where it be recommended that he have institutional care.

Dr. C. N. Chipman: It is said you intend to give dental service as well as medical service.

Dr. Brown: We haven't considered that.

Dr. Hooe: Have you yet arranged the duration of the hospitalization in your mind—the extent of the time during which your beneficiaries may be hospitalized?

Dr. Brown: Twenty-one days for any one illness, except in contagious diseases.

Dr. F. X. McGovern: I gathered from your initial statements that one of the facts that caused you to inaugurate this plan was your sick bill, or health bill, in the Home Owner's Loan Corporation. Have you proven that the sick bill is out of proportion to other departments of the Government?

Mr. Penniman: I could not answer that because I made no check of any other departments of the Government.

Dr. McGovern: Notwithstanding in your own organization by comparison, what you have heard of other departments?

Mr. Penniman: No comparison.

Dr. McGovern: Because of your particular health bill.—

Mr. Zimmerman (Interrupting): You perhaps realize that the Home Owners Loan Corporation is somewhat different from other Governmental agencies in that it operates on a reduced amount of lost time because of sickness, physical fitness. The employees show that you get better performance just like any private concern.

Dr. McGovern: I hadn't any knowledge that it was any different than other Federal departments.

Mr. Zimmerman: We have a different interest in improving operating efficiency.

Dr. McGovern: Dr. Brown, in your general statement you brought out the fact that you planned to practice ethical medicine. Just how can you reconcile having staff men with free choice of physicians? How the patient would have free choice of physician, in terms of the ethics of the American Medical Association?

Dr. Brown: The people join with the knowledge of the staff and, of course, there would be no free selection only as it pertains to the staff itself. If they are not satisfied with that staff they are privileged to get anyone they please at their own expense. We give them the service—we guarantee the service we have for them.

Dr. McGovern: In your setup there is no free choice of physician if they continue to belong?

Dr. Brown: They accept the faculty or staff as is. If they wanted you we could not have you to come in and see them.

Dr. Groover: According to rough figures you have an income of $50,000 a year. With that you propose to hire five or six doctors—full-time. You are proposing to hire technicians to operate the clinic and possibly pay rent, etc.,

and then provide hospitalization. I don't know why, but that just lets the question that it seems to me you are operating the thing on a rather slim budget to provide the patient with medical care.

Dr. Brown: We don't feel that way about it Doctor. I have recently visited a number of clinics in operation. I have visited within the year the Loos clinic in Los Angeles which has 15,000 members and a staff of 60 men. Have visited other clinics that have a staff of six or seven men, or four or five men. Recently I visited the Milwaukee-Rueth Clinic, which has five men, and I visited other clinics in Chicago; in Philadelphia there is also operating successfully a like and similar clinic giving excellent treatment. They are really practicing men who know a lot. It has been demonstrated that they are fully satisfied with the setup.

Dr. Groover: Just developing the fact.

Dr. Conklin: The Home Owners' Loan Corporation is not just a local affair?

Mr. Penniman: Oh, no. It has branches throughout the country.

Q. Would you be so good as to state whether you have any control over these branches outside of Washington?

Mr. Penniman: This is the headquarters. It has important offices in every state.

Dr. Conklin: It would seem reasonable to you that this clinic to be successful, which I believe it is going to be, that this clinic be instituted in these other areas?

Mr. Penniman: It is not contemplated at all. I would say there is only one factor that you would subscribe to it. We have in our regional offices where there is the largest number of employees, what we call a First Aid Room. There is a trained nurse in charge, i.e., to take care of just the emergency cases that develop during the day. Employees are privileged to go into this First Aid Room and get temporary treatment. The only contemplation at this time is to place those infirmaries under the directorship of the Medical Director to the extent that these nurses will have some directing head. We don't want these nurses giving hypodermics when they have no business to—they have no business prescribing medicine. We think they ought to be under the supervision only of a medical director as to the extent of the treatment it calls for.

Dr. Conklin: Under whom are these nurses now?

Mr. Penniman: Under the management.

Dr. Conklin: Governmental?

Mr. Penniman: Home Owners' Loan Corporation's local management.

Dr. Conklin: A Governmental institution. The nurses are definitely governmental employees?

Mr. Penniman: On the payroll of the Home Owners' Loan Corporation.

Dr. Conklin: Now then you propose to take them out of the Government?

Mr. Penniman: Leave them in the Government.

Dr. Conklin: And then Dr. Brown would have a double function. He would be acting as a governmental official and also supplementing as a head of an institution?

Mr. Penniman: He would not prescribe for any patients.

Dr. Conklin: Dr. Brown would not have any government position at all?

Mr. Penniman: He would not be under the Government.

Dr. Conklin: Suppose that Dr. Brown, for instance, issues some orders to some of these nurses and they are not just right fundamentally. Now, who would step in and who would have anything to say about Dr. Brown's definitely apparent misdeeds?

Mr. Penniman: The same person that would step in right now, under the direction of laymen, which is a situation we have never liked. Having them only with Dr. Brown as a guide to certain limitations to which he advises—only a matter of advice.

Dr. Brown: That would be through the local management?

Mr. Penniman: He tells them what they should not do.

Dr. Conklin: Is there nothing extraordinary in your mind about that situation?

Mr. Penniman: It occurs all right.

Dr. Conklin (Continuing): Dr. Brown, operating an enterprise that is entirely disassociated from the United States Government and yet Dr. Brown does have something to do with the Government in these various places throughout the United States.

Mr. Penniman: As I stated this extension of this plan out of these areas is not contemplated at all. They would still continue to operate as they are now operating. Whatever benefits Dr. Brown could give them would be that in any local situation. Any local doctor would be glad to

advise the nurse as to the extent of the treatment she should give.

Dr. Conklin: No connection with the Public Health Service?

Mr. Penniman: None at all.

Dr. Groover: I would like to ask if your organizing committee considered any other form of setup for operating this service which you speak of?

Mr. Penniman: For example, what would you have in mind?

Dr. Groover: For instance, you wouldn't see if you could make any arrangements with the Medical Society to render the service to a group of people?

Mr. Penniman: Would it have been possible if we had contacted the Medical Society whereby the employees could get the benefits of the Medical Society?

Dr. Groover: I think it may be possible.

Dr. A. B. Bennett pointed out that the employers, under compensation laws, through the Insurance Company pay the doctors per visit, per unit of service. They don't maintain a clinic and use the profession of the city.

Dr. Groover: I don't speak for the Medical Society. I don't mean for you to interpret it that way. I think I would be willing, for instance, to bargain with a group on some such basis.

Dr. Brown: What is the material difference in the way it is being done?

Dr. Groover: I think I can point that out. The reason I asked that question was the answer 'best medical service.' There is a difference of opinion as to what might be best medical service. The difference is you pay into the concern certain amount of money; the other plan you pay for what you get when you get it.

Dr. Brown: Insurance contracts are not always satisfactory. There is a great deal of fault found in the way it is operated. We feel this is a much more satisfactory and more reliable plan.

Mr. Penniman: You are familiar with the Group Hospitalization plan, for which I think the members pay 75 cents a month. There is no unit basis.

Dr. Groover: I beg to differ. Your contract with Group Hospitalization provides certain specific accommodations for a certain specific time. They have a definite contract—you don't have.

Mr. Penniman: The point I was making—you don't use hospitalization until you need it, although you may be paying for several years. Not a unit basis at all. It is really hospital insurance. We would prefer in our Association to look upon it the same way as health insurance.

Dr. Groover: That is all right, but isn't this——

Dr. Brown (Interrupting): A prepayment health insurance plan, nothing more, nothing less.

Dr. Groover: The Workmen's Compensation is pretty much the same thing. I have been buying Workmen's Compensation insurance for a number of years, and never get a penny back from it. Isn't that right?

The Chairman: Men with a salary you could pay on a basis of a $50,000 proposition——

Dr. Brown: I could get many competent men around Washington; could get men right here in Washington who are not making a decent living.

Dr. Conklin: Why do you think they are not making a decent living?

Dr. Brown: I don't know the reason.

Dr. Conklin: Do you think the men of best ability are making a living?

Dr. Brown: I think the men with the best ability are making a good living. Men with equal ability are not simply because they have not got the standing, not here long enough. Development of practice takes a number of years.

Dr. C. B. Campbell: What do you propose paying these doctors?

Dr. Brown: That depends on their ability.

Dr. Campbell: I have done a little figuring: The Medical Director is to receive $10,000; five physicians, say 5 @ $5,000 would be $25,000; rent $2,000, which I think is very reasonable, would leave $13,000. You have hospitalization of the patient, technicians, equipment, secretary, your office force, your overhead, and I was wondering if the Executive Committee or your Committee on Arrangements get any salary.

Dr. Brown: No salary.

Dr. Campbell: If I was running a store on that overhead I doubt that I would have a profit.

Dr. Brown: We don't want a profit.

Dr. A. B. Bennett: Is there any way the Medical Society could help?

Dr. Brown: We are anxious to go with the Medical Society. I am anxious to become a member. We will be very glad to have our staff make application and go with your Society in every way we can for the uplift of medicine. If you can help us select personnel we will be glad to take recommendations from this organization, to consider them, and perhaps employ them.

The Chairman asked if Dr. Daniel F. Lynch, Secretary of Columbia Dental Society, had any questions to ask.

Dr. Lynch: I would like to ask Dr. Brown—in your visit throughout the country, did you find sections on dental diagnosis in connection with these clinics?

Dr. Brown: Some of them are partnerships; some on salary, some on commission. We are not at this time considering dental service at all.

Dr. Hooe: May I ask Mr. Penniman two brief questions? Do you find, as a result of your study of this plan, are you led to the conclusion that by means of this plan the individual beneficiary is subjected to less expense during any given year than he has been in the past—that it is a financial saving to him?

Mr. Penniman: Yes, not only a financial saving to him but gives the member the benefits of a medical service which would cost him a great deal more money if he didn't take advantage of it.

Dr. Hooe: Second, and last question. Did we not understand you to say that you have incorporated and that you now have the articles of incorporation in this activity in which you are going to hire certain members of the medical profession to do your medical work?

Mr. Penniman: Yes, that is correct. The corporation is chartered to employ the medical physicians.

Dr. A. B. Bennett: Incorporated to render medical service?

Mr. Penniman: Yes.

Dr. Groover: Do you operate under any insurance law?

Mr. Penniman: What do you mean?

Dr. Groover: They have insurance laws in the District of Columbia.

Dr. Penniman: Indemnifying the doctors?

Dr. Groover: No. Under the District of Columbia Insurance Law all life insurance companies in the insurance business have certain regulations prescribed by Congress.

This is a health insurance. For instance, they have Group Hospitalization, Inc., under the District of Columbia Insurance law.

Dr. Brown: It is not a health insurance in that sense. We don't insure the health as your insurance policy covers it. Not an insurance in that sense at all.

Dr. Groover: Isn't that sidestepping the question?

Mr. Penniman: No, I don't think it is. It does not mean we will pay them for health insurance for benefits. It is preventive medicine.

Dr. Groover: Other companies do exactly the same thing. You go down and buy a Health and Accident policy; that company has to be licensed to practice under the law.

Dr. Thomas E. Neill: Don't they get around that by deducting sick leave and the salary goes on just the same?

Dr. Brown: We go on according to the rules—sick leave and absence leave. May be 30 days, or 15 days, so much according to leave. Annual leave may be applied to sick leave. They are paid for a definite period. In Civil Service they have a definite period for sick leave. If you use that up you can call on your annual leave. If it goes beyond 90 days they are on without pay.

Dr. W. M. Sprigg: Suppose you should be stricken with an epidemic and your funds immediately available are used up. Where would you secure funds to carry on? Have you any reserve?

Mr. Penniman: There is no reserve. We probably would come to the Medical Society for some help.

Dr. H. H. Schoenfeld: The employees are not necessarily Civil Service employees?

Mr. Penniman: There is no reason why the Association could not either raise the dues or lower the dues, according to whatever its treasury is. It is a nonprofit organization. The officers and trustees receive no salaries.

Dr. Sprigg: Just as we do in hospitals. We have given our services to the indigent for years.

Dr. H. H. Schoenfeld: The employees of this corporation are not necessarily Civil Service employees?

Mr. Penniman: This is a private corporation.

Q. It is not a Government department thing?

Mr. Penniman: Private institution entirely.

Dr. Sprigg: I would like to ask whether the Home Owners' Loan Corporation, in the case of emergency, will come forward and loan you money to carry on?

Mr. Penniman: I don't know how we could go to the Government and ask for it.

Dr. Sprigg: The Government can do anything in an emergency.

Mr. Penniman: We would not refuse.

Dr. Schoenfeld: Your corporation can for purposes of study of health, appropriate money to this organization?

Dr. Sprigg: The Home Owners' Loan Corporation can appropriate to the organization for services rendered it. The Home Owners' Loan Corporation in the case of emergency can appropriate without any Government supervision?

Mr. Penniman: That is right.

Dr. Conklin: I think that all of us present tonight appreciate just what these gentlemen have done. They have been kind enough, good enough to come down and meet with us. They have answered all of our questions and haven't denied us at all, no matter what their own personal feelings may have been concerning some of them. We are primarily interested in the patient's welfare. That has been demonstrated time and time again in this country and throughout the United States. I am wondering if they would accept the opportunity of a committee of three of the Medical Society to meet with them, with a view to making presentation as clearly as possible of the Medical Society's attitude primarily toward this particular proposition from the viewpoint of the patient, primarily. I wonder if that would be acceptable. I have no authority to say that the Medical Society would appoint such a committee. But if that would be acceptable to the Medical Society do you gentlemen think you would accept a proposition of that kind?

Dr. Brown: A further meeting to elucidate certain questions?

Dr. Conklin: I am sure there are certain ideas that definitely seem to be fixed. There is a possibility in further conference with three representatives of the Medical Society, who would go down to the Home Owners' Loan Corporation and talk these things over and see whether or not some alternative proposition will operate that would be acceptable to some 800 practicing physicians here in the District of Columbia. I would think it would be a wonderful thing.

Dr. Brown: Our objectives are identical with those you have expressed. We have no objections to meeting any committee of three.

The Chairman: To confer with their own committee if they would like to have such a meeting?

Mr. Penniman: We have a Board of Trustees.

The Chairman: It might not be a bad idea and to have as many men as they want, to discuss the thing further. There is no question that other units in the Government are going to undertake the same thing.

Dr. Conklin: If we may have a definite assurance, tentative acceptance of this plan, I think your coming down has been just a most successful thing with a view to definite harmony. I think that is what we want. We want to see these men and greet these men, and have them certainly not fighting organized medicine, because I think any doctor who attempts to do that is doomed to failure. We want to have this committee of three representatives to meet with you and talk these things over and with a possibility of making some little re-arrangement wherein we can come before our entire membership and present this thing and recommend adoption.

Dr. Brown: We are anxious for cooperative intercourse. We would be glad to consider those plans.

Mr. Penniman: I want to say—I should have said and would have liked to have said at the outset—reversing the words of Shakespeare: 'I came down with the idea of praising Caesar not burying him.' I have the most profound respect for the medical profession—always have had and always will have. It is the desire of this Association to work to the ultimate end that we may give our employees medical care. I speak not as an official of the Home Owners' Loan Corporation but as one of the employees. Medical Service of the highest type, within their ability to pay and to solicit at every point of view possible the full cooperation of the Medical Society of the District of Columbia. Glad to have it. I would like to make a suggestion—since we have a Board of Trustees consisting of eleven employees of the corporation who have been elected by the employees, that if you would be good enough to drop us a line so that we can put it clearly to the Board, your point of view, I am safe in saying that it would be met with a ready response.

Dr. Conklin: You mean the point of view as to this committee of three?

Mr. Penniman: Yes.

At this point Mr. Penniman, Dr. Brown, and Mr. Zimmerman left the meeting.

The Chairman asked the wish of the committee in the matter.

Dr. W. M. Sprigg was of the opinion that the committee could do nothing until the Society as a whole authorized it.

Dr. A. B. Bennett felt that a subcommittee should be appointed to bring about some change in the arrangements before a Society meeting is called, and the committee should have the plan as near finished as possible.

Dr. R. Arthur Hooe stated that he agreed with Dr. Bennett, but at the same time the committee was committing itself and definitely taking action on a matter involving public policy. 'While I am not in personal sympathy with it you placed in the Constitution last winter a provision that prohibits a committee of this kind from taking this action.'

The Chairman brought out the fact the report submitted by Dr. Verbrycke at the last meeting of the Executive Committee was accepted in principle.

Dr. Hooe said the committee could present that report to the Society and ask it to appoint a committee to confer with a committee of the Group Health Association. But when the Executive Committee appoints a committee to meet with this group to effect a compromise, to iron out the differences, for which the Executive Committee tonight does not stand, Dr. Hooe was of the opinion the committee was therefore taking action on a matter involving public policy. He added, 'You must have a meeting of the Medical Society and present Dr. Verbrycke's plan and what has occurred here tonight and ask it to appoint a committee.'

The Chairman said he would welcome a motion to the effect that a copy of these minutes be sent to the Active Membership so they would know what was going on. It was his opinion that 90 per cent of the membership knew nothing about this plan.

Dr. J. Russell Verbrycke made a motion that a copy of the Executive Committee report be sent to the membership for their digest with a notice that the matter will be acted upon at a certain meeting of the Society. He brought out the fact that his report contained the recommendation that a committee be appointed to carry on the work and not just for the purpose of meeting this committee but to get together and try to formulate a plan which will not violate any provisions or principles of the Medical Society. Any

final action would be dependent upon both organizations; not only of this organization but that of subsequent organizations which develop. Dr. Verbrycke pointed out that to make his motion parliamentary, it should come from a member of the Executive Committee.

Dr. H. H. Schoenfeld moved that Dr. Verbrycke's suggestion be adopted. Seconded.

The Chair pointed out that there were four of these units in the making. He added that Dr. Brown was adverse to meeting with the Executive Committee of the Society, postponing the time set. Just today at 12 o'clock he again called and asked to have the meeting postponed to a later date. The Chairman told Dr. Brown that this could not be done.

Dr. Sprigg would inquire if the motion would mean that a committee of eleven is to be appointed to meet with the committee of Group Health Association?

Dr. Schoenfeld said that was not the intention. He said it was his idea in offering the motion suggested by Dr. Verbrycke, that the whole thing should be carried promptly to a special meeting of the Society; therefore the report becomes the report of the Executive Committee to the Society. Then after the Society has made its determination, the committee may be set up as indicated. He said he realized that if a committee is appointed after a meeting by the Society, that that committee would come back with a final report that would require another meeting at a later date.

Dr. Sprigg offered an amendment that the personnel of the committee be not greater than 5 members.

Dr. Schoenfeld accepted Dr. Sprigg's amendment.

Dr. Horgan would inquire if these plans were predicated on the fact that we accept this thing that an organization of our Federal Government is undertaking.

Dr. Sprigg said that had nothing to do with this committee; that it was purely for the purpose of bringing Dr. Verbrycke's report before the Society, which report has been accepted in principle by the Executive Committee.

The Secretary said: 'It occurs to me that it might be a better idea to have this committee of 5 perhaps being constituted by members of the Executive Committee who have been fully cognizant of what has been going on and to not have this committee to be too official as representing the Medical Society. We shouldn't step that far yet. The

function of this committee should be largely that of finding points on which we might possibly agree and then finding the points on which we couldn't agree. In other words this committee is to feel out the organization and see where, if any place, they are willing to submit to arbitration or to consider some other scheme than the scheme they have now. If we can get some modification of this scheme it is my personal view that we have done a lot. Endicott Johnson had this same identical setup in New York State. The New York State Medical Society and Broome County Medical Society fought this thing tooth and nail. The result was that Endicott-Johnson did as they pleased and they give full medical care to the employees and all their families. They know about the Ross-Loos outfit in California. It was bucked by the California State Medical Society. They know about the other organizations throughout the land. Dr. Brown has that information. As I told Mr. Zimmerman the situation in the District of Columbia is different, where if this thing spreads to all government employees, which I have no doubt will be the situation, we can all realize what will happen to the practice of medicine in the District of Columbia. The seriousness of that situation means we should have a committee to go to their committee and feel out the whole thing; sift it out and get information about getting it to the Home Owners' Loan Corporation throughout the state. It is going to be widespread. My idea would be to have this carried on without this committee having any authority to bind the Society—just to find out what they will accept.'

Dr. Hooe: Briefly Dr. Conklin's idea would sound all right. I am referring to that part of it relating to the choice of five men of the Executive Committee. Ordinarily that would be all right. I think this whole matter is of extreme importance. I think I see the possibility of its being ironed out if the right five men are chosen and I don't see why, in choosing those men, if there are one or two best suited for that committee—I feel we can ill afford to leave them off that committee because they are not members of the Executive Committee. I refer to Dr. Tom Groover. He ought to be on that committee. His judgment will have weight on that committee. If the Chairman could go out of the Executive Committee and be permitted to choose I would say have Tom Groover on that committee.

Dr. Schoenfeld would ask how about Dr. Verbrycke.

Dr. Hooe: Had no objections to Dr. Verbrycke serving on the committee.

The Secretary would suggest that the incoming President appoint an unofficial committee.

Dr. Hooe did not agree with the suggestion.

Dr. Thomas E. Neill was of the opinion that a copy of what was learned tonight should be sent to the membership, with a copy of Dr. Verbrycke's report, and the matter should be brought to the floor of the Society. He felt there should be no hurry.

The Secretary stated the organization was 'ready to shoot.'

Dr. Neill added, 'They are shooting with their guns half cocked.'

Dr. H. C. Macatee: There are certain things that have occurred to me that I would call to your attention. This is something that affects vitally the whole membership of the Medical Society. Certainly no committee of it would undertake to do anything that seemed to commit the Society to any position in regard to it, but I would like to express the opinion that this is not a matter of public policy. If the Medical Society of the Executive Committee were to undertake to recommend that the Medical Society endorse cooperatives of this sort as a social setup in the District of Columbia, that would be a question of public policy. If you consider that this is a question of public policy then under the Constitution we are required to send this report and any action of the Executive Committee to every member of the Medical Society before calling a meeting to consider it. It seems to me that the report and the suggestions contained in it are very tentative offers of a possible organizing interest between two existing corporations. The Medical Society has been chartered over 100 years, and this corporation is incorporated and has a legal status. We can't express any opinion as far as the public policy is concerned. If this proposal is published to the whole membership of the Medical Society it, to a certain extent, becomes a public document. Whether the Medical Society adopts it or not it becomes a public document—it can't be helped. It seems much wiser for the Executive Committee to feel out whether there is any possibility of this corporation even considering a proposal of employing the organized

medical profession as its agency for rendering the services as it promises to its people before you go to the Medical Society with anything.

Dr. Hooe: Does that mean that the committee can go to these people but not in any way commit the Society—it can't offer anything? That would appear different.

The Chairman: What is the sense of appointing a committee unless we have something to offer?

Dr. Sterling Ruffin: This committee has a right to further confer along the same lines as we did tonight—not to commit the Society—for the purpose of getting all the facts. We can then bring it before the Society and let the Society take any action it deems proper. We have a perfect right to appoint a committee—suggest the appointment of a committee of five of this committee—with authority to take with them any members outside of the Executive Committee whom they wish; that would bring in Dr. Groover and Dr. Verbrycke, if they wish to have their assistance. There is nothing wrong about that.

Dr. Schoenfeld at this point withdrew his motion.

Dr. Ruffin made a motion that a Subcommittee of five members be appointed from the Executive Committee, with authority to add to the committee any other members of the Society, to confer further with the committee of the Group Health Association for the purpose of getting all of the facts concerning the Cooperative Medical Service Plan. Seconded. Finally adopted.

Dr. A. B. Bennett pointed out that some hospitals require that the courtesy staff should be members of the American Medical Association. Dr. Brown's cooperation with the Medical would seem important. Dr. Bennett would suggest that these facts be brought to the attention of the rest of the board.

Dr. Joseph Horgan was of the opinion that they should conform to the Principles of the American Medical Association. 'The thing that behooves us to attack is the fact that they have admitted they are setting up a corporation with taxpayer's funds to practice medicine. I asked Mr. Penniman with what funds was this thing subsidized; he admitted that it was from the funds of the Home Owners' Loan Corporation, an agency of the Government.'

Dr. Bennett pointed out that the Home Owners' Loan Corporation does not use taxpayers' money.

Dr. Horgan added: 'Essentially it is an agency of the Government. Remotely, if not directly, they are using taxpayers' money. If it were not true they would have to carry compensation policies to protect their own employees.' If the Society does not combat this plan there will be set up 'in our midst a Federal Agency unit for the corporate practice of medicine.'

The Chairman appointed the following committee: Drs. Sterling Ruffin, Thomas A. Groover, H. C. Macatee, Thomas E. Neill and J. R. Verbrycke, Jr.

It was pointed out that Drs. Groover and Verbrycke were not members of the Executive Committee. Dr. Sterling Ruffin asked not to be appointed as he was so much opposed to the plan.

The Chairman reserved the right to appoint a subcommittee at a later date.*

Adjourned.

C. B. Conklin, Secretary.

*Dr. Thompson appointed the following subcommittee:

H. C. Macatee, F. X. McGovern, Chairman, Earl R. Templeton, William P. Herbst, Jr., Coursen B. Conklin."

Gov. Ex. 106 is a letter from Dr. Herbst of Washington, D. C., to Dr. Olin West, dated June 25, 1937:

"Dear Dr. West:

I wish to thank you for your very kind letter which I received a short time ago.

In regard to Sir Henry Brackenbury I will be as nice to him as I know how and see if I can find out anything that is of any importance.

We are having a great time locally here at the moment. That Group Health Service affair of the HOLC has already been incorporated and our Executive Committee had a meeting with some of their representatives last night and it certainly looks bad. It was brought out that it is possible for them to borrow money from the Home Owners' Loan Corporation when and if necessary at any time for any purpose in regard to the health problem. It was also brought out that there are about two hundred branches scattered throughout the United States which maintain emergency rooms with a nurse which are directly under the

central office here in Washington. Just what is going to come out of the whole affair is impossible to predict at this time but there are going to be some conferences in an attempt to go along with this outfit if it is possible to do so and retain our faces.

I am on my way up to the A. U. A. in Minneapolis and if I can steal any time on the way up or way back, I shall give you a call and trust that it will be possible to have a little visit with you.

With very kindest personal regards, I am,

Sincerely, William F. Herbst."

Gov. Ex. 135 is an excerpt from the minutes of the Board of Trustees of the AMA of June 29, 1937:

"Home Owners' Loan Corporation; Group Health Association, Inc.; Group Medical Service Plan (p. 294): The following paragraph from a communication which Dr. West received from a physician in Washington, D. C., was read:

'The Group Health Service affair of the HOLC has already been incorporated and our Executive Committee had a meeting with some of their representatives last night and it certainly looks bad. It was brought out that it is possible for them to borrow money from the Home Owners' Loan Corporation when and if necessary at any time for any purpose in regard to the health problem. It was also brought out that there are about two hundred branches scattered throughout the United States which maintain emergency rooms with a nurse which are directly under the central office here in Washington. Just what is going to come out of the whole affair is impossible to predict at this time but there are going to be some conferences in an attempt to go along with this outfit if it is possible to do so and retain our faces.

Doctor Woodward reported information secured from a Washington physician over the telephone and by letter concerning this matter and there was considerable discussion as to what the action of the American Medical Association should be concerning the activities of the HOLC and also concerning the proposal of the Medical Society of the District of Columbia to organize its own cooperatives. After the discussion the following actions were taken:

Doctor Bloss moved that the Editor and the Secretary and General Manager be authorized to proceed to inform

the profession of the country as to the efforts of the HOLC to enter into the practice of medicine and as to the present status of the proposal to organize cooperatives by the Government. Doctor Hayden seconded the motion and it was carried.

Doctor Hayden moved, and the motion was seconded by Doctor Bloss and carried, that Doctors Woodward and Leland be requested to go to Washington to see what they can learn and to try to advise the Medical Society of the District of Columbia if that Society is willing to accept advice."

Gov. Ex. 177 is a memorandum written by Dr. Woodward on June 28, 1937, as follows:

"About four o'clock P. M., June 28, I talked with Dr. J. Russell Verbrycke, Jr., Washington, D. C., relative to certain statements in a letter just received by Dr. West from Dr. Wm. P. Herbst, Washington, concerning the Group Health Association, Inc., organized in Washington under the auspices of the HOLC. I referred particularly to Dr. Herbst's statement that the representatives of the Medical Society of the District of Columbia who met with representatives of the Association planned 'to go along with the Association' if they could do so and save their faces. I suggested to Dr. Verbrycke that I could not see how they could go along with the Association named without violating the principles of medical ethics of the American Medical Association. His answer was in effect that they would try to work out some plan whereby they could do so. Cooperatives, he said, were already with us, and the representatives of the Medical Society of the District of Columbia thought it would be better for the Society to help organized cooperatives on an ethical basis rather than oppose the wishes of the Association named. I asked him what cooperatives he knew of, and he named the Group Health Association, Inc. I called his attention to the fact that that organization was an illegal corporation, if there could be such a thing, in that it was incorporated to engage in the practice of medicine and dentistry. Dr. Verbrycke said that representatives of the Association had said that it was not planning to engage in such practice. I told him that its charter definitely planned that it should do so. He said that representatives of the Associa-

tion had refused to furnish him with a copy of its articles of incorporation and he was much surprised when I told him that those articles were matters of public record and that I had a copy of them.

I asked him what Dr. Herbst meant when he said that there were already two hundred emergency rooms with nurses in attendance, under the direction of the central office in Washington. Whether he meant that these two hundred emergency rooms were under the Washington headquarters of the office of the Association organized under the auspices of the HOLC. He said that reference had not been made to the present existence of two hundred such emergency rooms under the Association, but ultimately the Association expected to have that number of rooms throughout the country.

Dr. Verbrycke said that he had prepared a lengthy report on the situation, which report had been approved by a subcommittee and then by the full executive committee of the Medical Society. He promised to send a copy of that report and to try to get it off by air-mail, special delivery tonight. He said, too, that minutes had been kept of the recent conference with representatives of the Association and that he would send me a copy of those minutes.

Dr. Verbrycke said that a Mr. Penniman had stated that 'they' had the same right to look after the health of their employees that any private corporation had to look after the health of its employees. I suggested that in my judgment the representative of the Corporation had done some tall bluffing in the conference, but he felt confident that that would not be the case because Mr. Penniman is a high official in the HOLC and a smart man. I suggested that that very type would do the bluffing. Dr. Verbrycke expressed a wish for cooperation by the American Medical Association, but I had to tell him that we certainly could not cooperate with his group if it did not let us know what was going on. If we had been given notice of the proposed conference with representatives of the HOLC, I might, I told him, have come to Washington to attend.

W. C. W."

Gov. Ex. 198 is a carbon copy of a letter written over the signature of William C. Woodward, dated July 2, 1937:

"Dr. C. B. Conklin, Secretary, Medical Society of the D. C.,
Washington, D. C.

DEAR DR. CONKLIN:

Did the Medical Society of the District of Columbia at its special meeting on June 30 consider the status of the medical cooperative established by employees of the HOLC? If so, will you not let me know at once the result of the Society's deliberations? Will you not send me at the same time a copy of the minutes of the meeting at which representatives of the HOLC medical service association conferred with representatives of the Medical Society regarding the proposed medical service cooperative?

Yours truly,"

Gov. Ex. 199 is a letter from C. B. Conklin to Dr. Woodward, dated July 6, 1937:

"DEAR DR. WOODWARD:

At the special meeting of the Society held on June 30 the matter of the medical cooperative for the Home Owners' Loan Corporation was not discussed. Arrangements have been made, as you will see, in the transcript of the minutes of the joint meeting with representatives from the Home Owners' Loan Corporation for a committee from the Society to meet with representatives of the cooperative project at a future date. Dr. F. X. McGovern is the chairman of the committee from this Society.

Assuring you that it will always give us pleasure to keep your office fully apprised of any future developments, I am

Sincerely yours, C. B. Conklin."

Gov. Ex. 37 read from to jury as follows:

"Minutes of the meeting of the Executive Committee of the Medical Society of the District of Columbia, dated July 12, 1937.

Present: Drs. Borden, Chipman, Holden, Hooe, Macatee, McGovern, Neill, John A. Reed, E. Hiram Reede, Ruffin, Schreiber, Templeton, Yater, Conklin, and *Preston, *Sprigg and *Wells.

(*) In attendance after the meeting started.

Dr. F. X. McGovern, Chairman of the Subcommittee that was appointed to confer with representatives from

the Group Health Association, Inc., was recognized. He made a motion that his report be given preference over the other agenda for this meeting, and that it be heard at this time. Duly seconded and adopted.

For the information of the new members of the Executive Committee, Dr. McGovern outlined the prepayment medical care plan that has been set up by the HOLC, stating that the Executive Committee had appointed a subcommittee to meet with the Committee on Medical Economics to study the prospectus and bring a report back to this committee. A report, which was prepared by Dr. J. Russell Verbrycke, who was then the Chairman of the Committee on Medical Economics, was approved in principle by the Executive Committee at a subsequent meeting. Since that time the subcommittee has met and studied and reviewed supplementary plans by Dr. Verbrycke, which Dr. McGovern offered as a report to the Executive Committee tonight.

Dr. Macatee interpolated, for the information of the new members of the Executive Committee, that upon the adoption in principle of the report of the Subcommittee, the Subcommittee was given instructions to negotiate on the basis of that report with the medical service corporation, and this supplementary report is now made to gain alternative instructions.

(Copy of Dr. Verbrycke's letter, dated July 12, 1937, appended hereto.)

The Secretary made a motion that this letter be accepted as "the report of the Subcommittee and be approved in principle."

Mr. Lewin. It was adopted as the report of the committee, and it is by Dr. J. Russell Verbrycke.

"July 12, 1937.

Dr. F. X. McGovern, Chairman, Special Subcommittee of the Executive Committee on Cooperative Medical Care.

* * * * * * *

I have no longer any official status, but I am deeply interested in the entire subject, and since I was the author of the original report which has been approved in principle by the Executive Committee, I ask your leave to sub-

mit some further thoughts with the hope that they may be of some slight help.

The present HOLC corporation is only a minor consideration: (a) Either innumerable others will follow or (b) a large all-embracing organization will succeed all smaller enterprises. The first eventuality is not of great concern to us. Competition will kill them and since they cannot be large enough to supply a proper quality of medical care or hospitalization on their own account subscribers will gradually withdraw. Also the Medical Society by its present control over its members, and through them of the hospitals can adequately fight (if it is so desired) these small units. (Various methods which are more or less practical will be later detailed.)

However, if the second eventuality should occur, and one single large cooperative to take in all government employees should be formed, the considerations are entirely different and we must be prepared to admit the following:

1. With size and a single large cooperative its financial success is assured.

2. It can secure enough personnel of good quality, even if not the best, either local or imported, to assure its success from the patients' standpoint.

3. Its own medical center and hospital can be obtained.

4. It is not unlikely that a responsible organization could borrow all the money needed, even into the millions, through one of the administration agencies, such as P. W. A., just as many other projects have, without such an act making it a federal enterprise.

The Medical Society must therefore adopt a definite policy toward the cooperative movement as a whole, and at once, without wasting a great deal of time on the HOLC project. The alternatives of policy are primarily:

1. Approval of cooperatives as at present outlined.

2. A laissez-faire attitude of seeing what will happen.

3. Disapproval and active combat with all measures at our command.

4. Disapproval of all other plans and the offer of prepaid medicine through the Medical Society (a) either as a

Society subsidiary or (b) through a change in the Medical-Dental Service Bureau.

The first of these, approval, is manifestly an impossibility. The second alternative threatens through inertia more than any other factor.

Active opposition is possible at present. Whether it is advisable is another matter, unless some substitute plan can be suggested. Failure to place the cooperative on the approved list of the Medical Society would automatically forbid any consultations by members of our Society. Any fulltime employees of the corporation could probably easily fail to be put on the courtesy list of the hospitals for one reason or another without the fact of his connection with a cooperative being even mentioned. In fact any combative method would necessarily have to be camouflaged to the nth degree.

The original plan submitted to the Executive Committee envisioned the aid of the Medical Society in the formation of the cooperatives along ethical lines and their continuous active supervisica, insisting above all upon free choice of physicians. All cooperative corporations would be financially and administratively independent except for the control exercised by the Central Board elected by the Medical Society.

It would now appear that a better plan might be a much more ambitious one, namely, the formation of our own complete organization for the distribution of prepaid medical care as a distinct unit competitive with any other organization that may be formed.

This is the plan which Dr. West made it clear he favored as having the greatest chance of success. He made the further suggestion that our own Medical-Dental Service Bureau could be changed to take over the plan. I believe that none of us had previously thought of this solution and I personally believe that it has great possibilities.

The Bureau has done great work in allowing patients to budget their medical, dental and hospital care. It has also acted as the clearing house for the Central Admitting Bureau partial-pay patients. It has just about broken even on the 10 per cent allowed but it would not have been able to carry on had it not been for the C. A. B. business."

That is Central Admitting Bureau, I suppose.

"The Bureau has about reached its peak of volume of work and it would appear that various factors might tend to start it on the down grade. Therefore, it would seem that our having a working organization with personnel, quarters, etc., which might with the necessary changes function at any time, is a most fortunate thing.

Group Hospitalization is also vitally affected by the inception of cooperative medicine.

May I offer the earnest suggestion to your committee that you request a joint meeting with the Board of the Medical-Dental Service Bureau and the Board of Group Hospitalization, Inc., with a view to discussion of the factors affecting all and the possible formation of definite constructive plans.

Very truly yours, J. Russell Verbrycke, Jr."

Thereupon the Government requested a ruling on Gov. Ex. 292, being a copy of a letter from Verbrycke to McGovern dated July 12, 1937.

The Court: I understand this is simply to bring home knowledge to Woodward of the contents of this.

Mr. Kelleher: Yes, your Honor.

The Court: Is there anything to show how it got to him?

Mr. Leahy: Here—

Mr. Kelleher: Well, just a second. The stamp appears on there; and you will notice in Exhibit 177, which I just read, he requests information, requests that he be kept posted, and the memorandum says that he requests Verbrycke to keep him posted, and Verbrycke wrote this.

The Court: Oh.

Mr. Kelleher: Yes, Verbrycke wrote that.

The Court: What did the young lady say? Did she indicate in her testimony that this was actually signed by Dr. Woodward?

Mr. Leahy: No.

Mr. Kelleher: She did not. She testified, though, that that is Dr. Woodward's stamp which is used.

Mr. Leahy: Well, the stamp is in his office; it isn't Dr. Woodward's stamp.

Mr. Kelleher: That is right. She testified he would stamp them.

Mr. Leahy: Oh, no, she didn't. No, she didn't.

Mr. Timberlake: She testified all his mail was stamped.

Mr. Leahy: The mail was stamped just as the mail downstairs is stamped.

Mr. Kelleher: Even accepting that, that that is his stamp.

The Court: Yes. Well, that was my recollection.

Mr. Kelleher: Well, here is the letter in which he requests all information, your Honor, the memorandum which I have just read. He does not request it specifically.

The Court: You have nothing to show how this came about?

Mr. Kelleher: Well, except the circumstances in the file. It is his stamp, it is a copy of the minutes, and he requests a report on what the Society is doing. His very last sentence of that is—

The Court: What date is the letter?

Mr. Kelleher: This is June.

Mr. Timberlake: That is from the Board.

Mr. Kelleher: June 28.

Mr. Timberlake: That is also from the board, if your Honor please.

Mr. Leahy: Which report are you reading from there now?

Mr. Kelleher: This is the exhibit I read, Mr. Leahy, Exhibit 177, in which Verbrycke states that he will send him his—

The Court (interposing). The jury will be excused for five minutes.

(At this point the jury was excused from the courtroom.)

Mr. Kelleher: Note, your Honor, that in this memorandum Woodward reports that Verbrycke had already prepared a lengthy report on the situation, which he had agreed to send to him, and he said in the last sentence "that we certainly could not cooperate if he did not at least let us know what is going on."

Mr. Leahy: That is the Verbrycke report that we have already read before.

Mr. Kelleher: That is right.

Mr. Leahy: It is not this one.

Mr. Kelleher: I am not claiming this specific report is asked for, but he asks him for all information.

The Court: I am inclined to think that there are circumstances enough to justify the admission of it.

Mr. Leahy: Well, I don't see where there is anything in there, if your Honor please, upon which there is a reason-

able inference that it came to Dr. Woodward's attention.

The Court: It was undoubtedly in his office.

Mr. Leahy: Could I see the copy of it? I have never seen one.

The Court: And then you have these indications of Dr. Woodward's interest in the matter and of his interest in Verbrycke's report, and that sort of thing.

Mr. Richardson: He asks that information be sent him.

Mr. Leahy: But that is another report he is referring to, but it is not that one.

The Court: But it seemed to be.

Mr. Richardson: Would a request for information carry all possible information that would come in that bears a stamp on the letter, without any proof it ever got to Woodward?

Mr. Kelleher: When he asks for it, it should.

Mr. Richardson: When he asks for information, everything is information: he might have sent him the Encyclopedia Britannica.

The Court: Yes. My impression is that Dr. Woodward has manifested a very lively interest in this subject; there is no question about it. This letter treated as a report of a subcommittee, this letter of Verbrycke's that has just been read here.

Mr. Richardson: That is right.

The Court: Which made it a matter of importance. He has been requested to be kept advised of what goes on here in Washington with the local association.

Mr. Richardson: That is right.

The Court: Soon thereafter. The date is here. What is that? September 1? Can you make that out? Is it September 1?

Mr. Richardson: What was the other date?

Mr. Kelleher: July 12.

The Court: Well, I know, but what is the date of your meeting?

Mr. Kelleher: July 12, your Honor, is the meeting.

Mr. Leahy: July 12. What is the date of that stamp down there?

Mr. Richardson: July 12th.

Mr. Leahy: What is the date of that stamp down there?

The Court: What is that?

Mr. Kelleher: September 1.

The Court: Well, that report has undoubtedly come from the file, those files. I am inclined to think you have got circumstances enough there to argue that he had knowledge of it. If that is true, then it is admissible. I will admit it.

Thereupon the Government made the following statement:

Mr. Kelleher: Exhibit 292 is a copy of the report which Mr. Lewin has just read, which is from the files of the AMA and bears on it the stamp, "File, Sep. 1, 1937, W. C. C.", and one of the girls in his office testified that it was the stamp placed on the mail received in his office.

I shall now read Exhibit 152, which is an original letter from the defendant Olin West to Dr. Verbrycke, dated July 12, 1937:

"DEAR DOCTOR VERBRYCKE:

Our telephone conversation this morning was not altogether satisfactory for the reason that I could not hear you very well.

Since the meeting held at the Metropolitan Club in Washington the other evening, I have given a little more thought to the matters that were discussed and have come to the conclusion that I offered one suggestion for the consideration of the Medical Society of the District of Columbia that it was not altogether wise to offer. I stated, in effect, that if I were a member of the committee of the District Society, I should want to consider the advisability of organizing a sort of cooperative movement under the auspices of the society to offset the effect of the cooperative movement that is now being promoted by certain agencies in Washington. Having thought the matter over more carefully, I have come to the conclusion that that was a poor suggestion to offer, for the following reasons:

First, I do not believe that the District society could organize any sort of cooperative scheme without establishing a relatively low income limit for those who might be included among the beneficiaries of the scheme. It is my understanding that the so-called HOLC cooperative does not intend to establish any particular income limit, but that the higher paid officers among the employees of that corporation are to be included in the cooperative scheme. Certainly the District society could not afford to undertake any sort of plan under which persons enjoying relatively large incomes

would be included. Secondly, if the Medical Society of the District of Columbia should attempt to organize and operate a cooperative movement, it would at once give endorsement to the principle of collective bargaining, which, in my opinion, can not be properly applied to medical service.

Since I returned to the office this morning I have talked with Doctor Woodward and with Doctor Leland, both of whom expect to arrive in Washington on Wednesday morning in the hope that they may be able to be helpful in some way to the committee of the District Medical Society. Doctor Woodward seems to be inclined to believe that the cooperative movement now being promoted in Washington might be successfully opposed on the ground that when it goes into operation it will be a corporation engaging in the practice of medicine. As you know, court decisions in several states have specifically declared the practice of medicine by a corporation to be illegal.

I was delighted to see you while I was in Washington and to have the privilege of meeting with the members of the group at dinner at the club. I am sorry indeed that I could not offer some suggestion that might be more helpful to your committee, but I hope that Doctor Woodward and Doctor Leland will be able to be of some assistance.

With most cordial good wishes, I am,

Very truly yours, Olin West."

The Government continued reading from the minutes of the Executive Committee of the Medical Society of July 12, 1937, excerpts as follows:

"Dr. Hooe—He thought the plan discussed with Dr. West offered great possibilities.

Dr. McGovern, in answer to why the Subcommittee had not met with the Group Health Association representatives up to this time, said that his committee did not feel that it was ready to meet until it had something concrete to offer. He stated that within the past week Dr. Olin West, Secretary of the American Medical Association, was in the city and met with the committee and it was felt that very important information was obtained through this meeting. He added that he had a telegram from Dr. West, stating that Drs. W. C. Woodward and R. G. Leland (the latter Director, Bureau of Medical Economics) of the American Medical Association would be in Washington Wednesday morning of this week.

Dr. Thomas E. Neill pointed out that the subcommittee was appointed on June 30. The Chairman of the committee as constituted did not accept the appointment and Dr. Neill appointed a new chairman, Dr. McGovern, to take the place of a member who did not want to serve. He was of the opinion that the committee should have something concrete to offer when they meet the representatives of the Group Health Association. He said he gained, personally, a lot of information from the conference held with Dr. West. He felt that the subcommittee should meet with the Board of Trustees of the Health Association and then in the fall, at the first business meeting of the Society, some concrete recommendation could be adopted."

Dr. R. Arthur Hooe, as chairman of the Compensation, Contract and Industrial Medicine Committee, would call attention to the fact that by fall this thing (Group Health Association, Inc.) would be running very smoothly. He felt that there was no time to lose in dealing with the matter. Dr. Hooe was of the opinion that the subcommittee should do its work and do it promptly, and come back with something definite to the Executive Committee to recommend to the Society at a meeting to be called.

At this point Dr. Ruffin suggested that, for the benefit of Dr. Sprigg, the portion of the report of the Subcommittee dealing with the recommendations be read. This was done by Dr. McGovern.

Dr. McGovern added that his committee did not know just what the attitude of the Executive Committee of the Society would be; whether to fight this thing with the weapons at hand or possibly set up an organization to combat it. The committee felt that some definite instructions should be given along that line.

The Chairman said it was his understanding that the subcommittee had the authority to meet with representatives of the HOLC for the purpose of getting from them all of the data they could; not to go to them with any plan or proposition but to get information and to bring it to the Executive Committee and the Society for approval.

The Secretary at this point at the request of Dr. McGovern, read 'Suggestions for agenda for joint meeting of the Subcommittee of the Executive Committee of the Society, with the Committee from the HOLC.' (Copy appended hereto.)

The Chairman, for the benefit of the committee, stated that he had information which would indicate that the Ross-Loos plan, which split the California State Medical Society, was not progressing so well; that the wind was blowing the other way. He was informed that the Ross-Loos Corporation was resorting to other means of business to make up their deficit.

Dr. Macatee pointed out the fact that the Group Health Association itself was a small group, but there were possibilities of it involving other federal employees.

Dr. Hooe said he was of the opinion that when this subcommittee goes to the representatives of the Home Owners' Loan Corporation it should carry nothing binding upon the Society. He pointed out that what is done in the Executive Committee is not binding upon the Society. He would suggest that an early meeting of the Society be called to present the proposition. He thought the consensus was that the corporation as it now stands would not be countenanced by the Society. He felt that there were so many substitutes that could be offered and therein lies the one hope for defeating the plan."

I would omit page 4. Do you want it read?

Mr. Leahy: Yes.

Mr. Lewin:

"The Secretary stated that when the subcommittee goes down to meet the representatives of the Group Health Association there was no one better than Dr. Macatee to be the spokesman and the rest of the committee should be observers.

Dr. John F. Preston would inquire if there was anything in the setup which would allow the Home Owners' Loan Corporation to put their money in such an enterprise?

Dr. Macatee said that he was talking to a patient who was an attorney in the corporation and he said it could be done perfectly legal, and if his recollection was correct, that the papers had gone over this attorney's desk. They could do anything not contrary to the law and constitution for the benefit of their employees. In respect to the duties of the subcommittee, Dr. Macatee pointed out that according to the letter which was addressed to the members of the Group Health Association, that it was clear that at least

one medical man had made a contract with the group, and that they are on the verge of going into action. 'It had been thought by the Subcommittee that we could probably go before the Trustees and we could ask them what their prospectus meant when it said that they wished to enter into the fullest cooperation with the Medical Society of the District of Columbia, to ask for representation on their board in an advisory capacity, and they wished to do their work in an harmonious way. We thought we might say to the Board of Trustees that the Medical Society had looked upon the organization with some concern and that we wondered if the Trustees sensed the threats involved to the success of their enterprise by the fact that their subscribers would not in the long run have the free choice of physicians. Whether they understood that as soon as some grave medical problem arose among the employees they would not follow the usual human instinct and say, "We don't want these hired men, we want the best;" whether that would not be disruptive of the whole plan. The Trustees are laymen * * *. Whether in view of those facts and other facts they might not feel that the principles of organized medicine, that the free choice of physician is essential to the success of any proposition, that may convey something looking to the entire medical profession of the District of Columbia as a source of the medical and surgical service they may need. If they could consider that we would be glad to take it up with the Medical Society and see what could be worked out. It is for this committee to decide whether it is likely that any good will come from such a meeting.'

The Secretary was of the opinion that the Subcommittee should be sent down to ascertain the facts and have Dr. Macatee speak along the lines which he just did. The lay members of the Board of Trustees would in all probability immediately understand that they haven't anything comparable to what the Medical Society may possibly offer in these few $3,000.00 a year men they may be able to pick up outside of the organized medical profession. Further, Mr. Penniman, Mr. Zimmerman and Dr. Brown were given to understand that a committee would be glad to meet with them. I felt it would be undiplomatic to back out now.

Dr. Ruffin offered an amendment to Dr. Conklin's motion to the effect that the Subcommittee, of which Dr. F. X. McGovern is chairman, be instructed to present arguments

along the lines just outlined by Dr. Macatee and bring back a report to the Executive Committee with a view to a meeting being called of the Society at an early date.

Dr. Hooe suggested to incorporate in the amendment the time for the meeting of the committee and the Society—in the very near future.

At this point Dr. Conklin and Dr. Ruffin withdrew their motion and amendment.

Dr. Macatee made a motion to the effect that the supplementary report of the Subcommittee be received and be held on the table for future consideration, after the report of the Subcommittee. Seconded and adopted.

Dr. Ruffin made a motion that the Subcommittee be instructed to meet with the Home Owners' Loan Corporation representatives, to be addressed by Dr. Macatee along the lines discussed, and bring a report back as promptly as possible to the Executive Committee with a view to a meeting of the Medical Society. Seconded and carried.

Dr. Wallace M. Yater would offer ~~an amendment to the~~ effect that the Subcommittee bring back its report after it confers with the HOLC representatives and also after it has had sufficient conference with Drs. W. C. Woodward and R. G. Leland. In fact Dr. Yater felt that the Subcommittee should confer with Drs. Woodward and Leland before and after they go to the HOLC to get advice as to how to proceed. No second to this amendment.

Dr. Ruffin was of the opinion that it could be left to the committee to do this without any specific instructions.

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At this point Dr. F. X. McGovern, Chairman of the Subcommittee of the Executive Committee appointed to prepare an approved list of organizations, groups and individuals, engaged in the practice of medicine within the District of Columbia, in accordance with Chapter IX Article IV, Section 5 of the Constitution, was recognized. He read the provision of the Constitution as follows:

'No member of the Society shall engage in any professional capacity whatsoever with any organization, group or individual, by whatever name called or however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, which has not been approved by the Society.

The Executive Committee is authorized and directed to prepare an approved list of organizations, groups and individuals, by whatever name called and however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, and the same shall be kept in the office of the Secretary-Treasurer. Before any such organization, group or individual can be placed on the approved list of the Society, such organization, group or individual, or the member of the Society proposing professional relations therewith, shall submit to the Compensation, Contract and Industrial Medicine Committee such evidence as the committee or the Society may require showing the character, activities, financial condition and ethical standards of said organization, group or individual, and after considering the same, said committee shall make a report of its investigation and findings to the Executive Committee for such action as it may deem necessary.

Dr. McGovern stated that he requested the various county medical societies in Virginia and Maryland, within 10 miles of the District of Columbia, to send him a list of their membership. He was not very successful by letter and intended to contact the Secretaries personally. He added that there were a few physicians practicing medicine in the District of Columbia who were not on the rolls of the Society. The Society's office was busy at the present time checking the list of physicians and surgeons as classified in the newest telephone directory and the Commission on Licensure had been approached to obtain a list of all licentiates in the District of Columbia.

The Chairman, Dr. Sprigg, stated that he requested a list of the licentiates and the Society's office was informed that the records of the Commission on Licensure would be available if the Society could supply clerical help to type the list.

Dr. McGovern read a proposed list of approved organizations, groups and individuals.

Dr. Macatee suggested that the words 'employed by' be substituted for the words 'connected with' in item 10. With this change the list was approved, upon motion, duly seconded and adopted, as follows:

1. All members of the Medical Society of the District of Columbia.

2. Medical staffs of all hospitals, institutions and clinics, each member of which has been approved by the Medical Society of the District of Columbia.

3. The United States Government Medical Personnel on duty in the District of Columbia, or within 10 miles thereof, i. e., the United States Army, Navy, Public Health Service, and the Veterans' Administration.

4. The Health Officer and attached medical personnel.

5. Membership of the District of Columbia Dental Society.

6. Membership of the Homeopathic Medical Society.

7. Members of the Montgomery County (Md.), Prince Georges County (Md.), Fairfax County (Va.), and Arlington County (Va.) Medical Societies, who reside within 10 miles of the District of Columbia.

8. Members of the Alexandria Medical Society.

9. The following compensation clinics:

	Operated by:
Farragut Medical Clinic	Frank M. Gantz, M. D.
First Aid Station	Arch L. Riddick, M. D.
Harry M. Lewis Clinic	Harry M. Lewis, M. D.
Market Compensation Accident Clinic,	M. J. Kossow, M. D.
Northeast Insurance Clinic	G. Henry Rawson, M. D.
Union Market Workmen's Compensation Clinic	Maxwell Hurston, M. D.
Washington Industrial Accident Clinic	Edward Clark Morse, M. D.
Washington Medical Building Workmen's Clinic	Charles S. White, M. D.

10. All medical personnel employed by the Federal or Municipal Governments within the District of Columbia or within 10 miles thereof.

11. Membership of the Medico-Chirurgical Society (colored medical society).

12. Membership of the Robert T. Freeman Dental Society (colored dental society).

Dr. Raymond T. Holden, Jr., inquired as to the personnel (medical) of the proposed Group Health Association, Inc.

Dr. Hooe pointed out that it was a separate individual corporation and would have to be approved as a single unit. As a matter of information, Dr. Hooe would inquire if he was right in the assumption that this approved list

would not have to be submitted to the Society but from tonight on would be filed in the Secretary's office for reference.

The Chairman ruled that according to the wording of the Constitutional provision that would be the understanding.

Dr. Hooe made a motion to the effect that the Secretary of the Society be directed to write a short letter to every member of the Society, calling attention to this constitutional amendment, quoting it in the letter, and informing them that the approved list (which shall be added in the letter) is now available in the Secretary's Office and is in force; and further that any violation thereof they will be liable for. This letter to be sent registered mail. Seconded.

The Secretary offered an amendment to the above motion to include that the list as read by Dr. McGovern tonight be enclosed, and not the individual names of physicians. Seconded and accepted.

* * * * * * *

Suggestions for Agenda for Joint Meeting of Committee Representing the Executive Committee of the Medical Society of the District of Columbia, with the Committee from the Home Owners' Loan Corporation

1. Attempt to be made by pointed questions to obtain a copy of written contract between the H. O. L. C. Medical Service and its clients.

2. The establishment of attitude of H. O. L. C.: should the Medical Society of the District of Columbia offer to furnish in its entirety, through its members, allowing free choice of physican, the entire proposed medical service, regular and consultant.

3. Would the H. O. L. C. consider giving up its present preparations for giving medical service through full-time $3,000.00 per annum doctor employees should the Medical Society advocate the enlargement of the facilities that are already at hand in its Medical-Dental Service Bureau, for the purpose of taking care of large groups of Governmental employees, on a mutually approved prepayment plan?

General Impressions as to Proper Methods of Carrying on the Joint Meeting

1. Before the date of the meeting, objectives should be definitely determined and mutually agreed upon by all committee members.

2. Such propositions are to be offered, with the thought in mind that they are but tentative and are but 'feelers,' should be done in an orderly manner and by selected spokesmen.

3. There should be no general speaking by all members of the committee, as this but leads to confusion and to perhaps defeat of the attainment of some definite objectives.

Finally, the committee should be guided by words of wisdom that were given by Dr. Olin West at a recent meeting, and should be governed by what has actually taken place throughout the states, i. e., in the way of prepayment plans advocated, installed, and successfully operated by components of state medical organizations. In other words, there should be no denying of what has definitely taken place. The teachings of experience should be weighed against the visionary and impractical promulgating of views and attitudes established by organized medicine, which in many instances constituent bodies have flauntingly discarded. The turning of public opinion against the California State Medical Society in its fight against the Ross-Loos Clinic is well worthy of thought. It would seem that in the Nation's capital that any active campaign by organized medicine for the purpose of denying the present organizers the use of their personnel might have, to say the least, very undesirable implications. The utmost diplomatic handling is required."

Mr. Lewin: I think it would be proper for me to call the Court's attention to the fact that was the agenda for the meeting at the Home Owners' Loan Corporation, the minutes of which were fully read to the jury.

Mr. Kelleher: That was July 26th.

Mr. Leahy: I have just one suggestion to offer with reference to the letter of Dr. Verbrycke dated July 12, 1937, which was appended to the minutes just read by counsel. I take it that the motion which was made later on to table

the letter refers to that as the supplementary report of the subcommittee; I have it on page 8. Dr. Macatee made the motion to the effect that the supplementary report of the committee be received and be held on the table for future consideration. That motion was seconded and adopted.

Mr. Lewin: I think that is true. I think it was adopted as the report, and then held over for further consideration.

Mr. Leahy: But it was not adopted.

Mr. Lewin: Oh, yes; and that was tabled for further consideration, and it was sent to the A. M. A.

Mr. Leahy: But it was not adopted.

Mr. Lewin: Well, it was moved and seconded.

The Court: You speak of it as being adopted. It was adopted by the subcommittee as the report.

Mr. Lewin: Dr. McGovern presented it to the committee as a report of his subcommittee.

The Court: Then what became of it?

Mr. Lewin: Then it was tabled for further consideration.

The Court: I think that is right.

The Government then read Gov. Ex. 153, a carbon copy of a letter from Dr. West to Dr. C. B. Wright, dated July 14, 1937:

"DEAR DR. WRIGHT:

I had a long conference with a committee of the Medical Society of the District of Columbia about the cooperative movement that is being promoted by groups of government employees. The District Society is apparently very much agitated about this matter, but as a matter of fact, there was very little that I could offer them in the way of suggestions as to what they might or should do. In accordance with authorization given by the Board of Trustees, I have asked Dr. Woodward and Dr. Leland to go to Washington for the purpose of conferring with the Medical Society and they are to have a conference with official representatives of the Society in Washington today.

There seems to be a lack of authentic information concerning the exact nature of the cooperative movement. A man in rather high official position in the HOLC was quoted in Washington as having specifically stated that the HOLC is not to finance the cooperative movement. Information from other sources, however, is exactly to the contrary.

Nobody has as yet been able to get a copy of the contract that may exist between the cooperative organization and the HOLC, nor has anyone been able to get a copy of the contract that will be entered into between the cooperative and those who purchase its contract. I was told that 2000 or more government employees have already signed up as members of the cooperative, and a few minutes later I was told by a Washington physician that employees in certain departments had refused to have anything whatever to do with the movement. It seems almost impossible to get information in Washington that you can tie to. I have never in all my life seen such a situation as now exists. I think Dr. Woodward has about come to the conclusion that the only way to fight the cooperative movement among government employees is to wait until the facts can be definitely discovered and then resort to court procedure in an effort to have the cooperative declared a corporation engaged in the practice of medicine. I am not yet come to any definite conclusion in my own mind as to whether or not this would be a wise procedure."

Gov. Ex. 178 is a telegram from Dr. Woodward to Dr. Verbrycke dated July 13, 1937:

"Leland and I arrive Capital Limited Wednesday stop Leave it to your judgment to arrange a conference at which all essential persons will be present stop It will apparently be necessary for the Society to employ counsel to guide it and presence of that counsel at conference is essential stop If regular counsel is not available his representative or other counsel should be present stop so that we can leave Washington not later than Thursday afternoon, July 15 stop Time of conference immaterial to us. We shall be at the Mayflower.

William C. Woodward."

Gov. Ex. 200 is a memorandum from Drs. Woodward and Leland to Dr. West, dated July 16, 1937:

"A prospectus for a plan for a Cooperative Medical Service on a periodic payment basis for Federal employees and their families in Washington was circulated sometime ago. The prospectus is not dated and the time of its issue is unknown. It was circulated anonymously. The plan proposed was to make available to Federal employees in Wash-

ington, and to their families, adequate medical care, both preventive and curative; to provide this care at a moderate cost; and to place that cost on a regular, budgetable basis within the means of the group to be served.

A certificate of incorporation for the Group Health Association, Inc., was executed February 19, 1937, by W. F. Penniman, R. T. Berry and Pearl B. Murphy, and subsequently recorded in the office of the Recorder of Deeds of the District of Columbia.

W. F. Penniman is one of the assistant general managers of the HOLC and has charge of District No. 6. The occupations of R. T. Berry and Pearl B. Murphy are unknown, but it is understood that they are officers or employees of the HOLC.

An amendment to the articles of incorporation was executed April 21, 1937, for the sole purpose of increasing the number of Board of Trustees, and the amendment was filed in the office of the Recorder of Deeds for the District of Columbia.

The association is organized as a corporation not for profit. Membership is limited to employees of any branch of the United States Government other than officers or enlisted men of the United States Army and Navy. Nothing in the articles of incorporation limits the Association's activities to the District of Columbia.

Among the purposes of the Association are the following:

(1) To provide the service of physicians and other medical attention and any and all kinds of medical, surgical, and hospital treatment for the members of the Association and their dependents.

(2) To furnish all forms of hospital service to members of the Association and their dependents.

(3) To construct a clinic and medical office building.

(4) To construct and operate a hospital, for members of the Association and their dependents.

(5) To operate a drug store or pharmacy and to provide drugs and remedies for members of the Association and their dependents.

(6) To provide nurses for members of the Association and their dependents.

(7) To give to members of the Association and their dependents all forms of care, treatment, or attention that may be required by the sick or in the prevention of disease.

The articles of incorporation are silent as to the sources from which the Association is to obtain funds for organization and operation, except in so far as they say that the corporation is to have no capital stock but is to be an association controlled by its members and that all members whose dues have been paid if and when the Association is liquidated shall have the right to share in the distribution of its assets.

The prospectus referred to above says that the plan should be launched and publicly announced at a dinner or other similar meeting at which representatives of the press should be in attendance, and that immediately thereafter all Federal employees should be informed of the plan through meetings and circulars and should be asked whether they would be willing to participate. If the response was favorable, the campaign was to start to obtain the necessary capital through advance payment of 'enrollment fees.'

It is understood that a meeting of some kind was held by the organizers of this movement at which, it has been alleged, Secretary of Labor Perkins, Secretary of Agriculture Wallace, and Secretary of the Interior Ickes, and other prominent government officials were present. This however, was apparently not the meeting referred to above, and so far as is known, no public announcement has been made of the organization of the Group Health Association.

It is understood that membership so far has been limited to officers and employees of the Home Owners' Loan Corporation.

The Home Owners' Loan Corporation, according to an announcement sent over the signature of Mr. Penniman, President, and R. T. Berry, Secretary-Treasurer, April 15, 1937, has entered into a contract of some kind with the Group Health Association, Inc. The announcement reads in part:

'Under the terms of the contract between your association and the HOLC two persons are selected by the Federal Home Loan Bank Board who shall serve on the Board of Trustees.'

The existence of such contract and the control of the Association by the HOLC through the Federal Home Loan

Bank Board is shown by an announcement subsequently issued by W. F. Penniman, and R. T. Berry, said notice having been issued, it is believed, sometime during the first ten days of July, in which it is said:

'The by-laws of the Association have been adopted by the Board of Trustees of the Group Health Association and approved by the Federal Home Loan Bank Board.'

It is understood that the Home Owners' Loan Corporation has aided and is aiding to finance the launching of the Group Health Association, Inc., through a loan or loans, and through a contract or contracts whereby the Association, through its officers will undertake to perform certain services for the Home Owners' Loan Corporation, but the nature of those services is not known. All efforts to procure a copy of the contract agreed upon between the Home Owners' Loan Corporation and the Group Health Association, Inc., have been unsuccessful. It has been stated by Mr. W. F. Penniman, an official of the Home Owners' Loan Corporation, and president of the Group Health Association, Inc., that the Home Owners' Loan Corporation has appropriated an initial sum sufficient to carry on the Association for two years because of some hypothetical benefit the corporation is to obtain from the activities of the association. Furthermore, when asked whether the Home Owners' Loan Corporation could not, for purposes of study of health, appropriate money to the Group Health Association, Incorporated, and whether the corporation could not appropriate for services rendered, or appropriate in case of emergency without any government supervision, Mr. Penniman admitted that that was the case.

The Group Health Association, Inc., is obnoxious to law for the following reasons:

(1) It proposes to practice medicine through physicians hired by it, although the Association is not licensed to practice and could not be so licensed.

(2) It proposes to practice dentistry through dentists hired by it, although it is not licensed to practice dentistry and could not be so licensed.

(3) It is engaged in the business of insurance, without so far as available records show being qualified to engage

in such activities. It is obnoxious to public policy for obvious reasons."

Gov. Ex. 45 is a mimeographed copy of a letter signed by C. B. Conklin, Secretary, on the letterhead of the Medical Society, dated July 29, 1937, to "Dear Doctor:"

"It may have come to your attention that there is an organization or organizations that are interested in gaining medical personnel. Your attention is called to Chapter IX, Article IV, Section 5 of the constitution, quoted in full.

You are particularly urged to submit to the Compensation Contract and Industrial Medicine Committee, pursuant to the constitution, any and all contracts, written or verbal, under which you may contemplate giving your services.

Very truly yours, C. B. Conklin."

The second page of Gov. Ex. 45 is a mimeographed letter from Dr. Conklin dated July 29, 1937, to "Dear Doctor":

"Pursuant to action of the Executive Committee, held on the evening of July 12, 1937, and in fulfillment of Chapter IX, Article IV, Section 5 of the constitution, your attention is hereby called to the list of organizations, groups and individuals herewith enclosed. The approved list is on file with the Secretary's office. The amendment is now in force. Any violation thereof will make a member liable according to the provisions of the constitution:

Chapter IX, Article IV, Sec. 5:

'No member of the Society shall engage in any professional capacity whatsoever with any organization, group or individual, by whatever name called or however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, which has not been approved by the Society.

The Executive Committee is authorized and directed to prepare an approved list of organizations, groups and individuals, by whatever name called and however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, and the same shall be kept in the office of the Secretary-Treasurer. Before any such organization, group or individual can be placed on the approved list of the Society, such organization, group or individual, or the member of the Society proposing pro-

fessional relations therewith, shall submit to the Compensation, Contract and Industrial Medicine Committee such evidence as the Committee or the Society may require showing the character, activities, financial condition and ethical standards of said organization, group or individual, and after considering the same, said committee shall make a report of its investigation and findings to the Executive Committee for such action as it may deem necessary.

Very truly yours, C. B. Conklin, M. D."

The Government then stated there is attached to Exhibit 45 a list of organizations approved by the Committee on July 12, 1937.

Gov. Ex. 201 is a letter from Dr. Woodward to Dr. F. X. McGovern, dated July 26, 1937:

"DEAR DR. MCGOVERN:

I shall appreciate it very much if you will let me know what the Medical Society of the District of Columbia or your subcommittee has done, and what its present plans are with respect to the Group Health Association, Inc. The situation is one in which the entire medical profession of the United States has a deep interest, and I would like therefore to be kept in as close touch with it as is possible.

Yours truly, William C. Woodward."

Gov. Ex. 179 is a carbon copy of a letter from Dr. Woodward to Dr. McGovern dated July 17, 1937:

"DEAR DR. MCGOVERN:

In compliance with your request, I send you herewith (1) the articles of incorporation of the Group Health Association; (2) a copy of the prospectus sent out by the promoters of that association; (3) the notice sent out by William F. Penniman, president of the association, with reference to the first meeting and election of officers, and (4) a report sent out by the same party concerning the activities of the Association.

I have retained the original certified copy of the articles of incorporation and have made and retained copies of the prospectus, the call for the first meeting and the subsequent report.

If there is anything I can do with respect to this matter, please call on me.

Yours truly, —— ——, Director."

Gov. Ex. 37 read to jury as follows:

"Minutes of a special meeting of the Executive Committee of the Medical Society, dated July 27, 1937.

Dr. Wm. Sprigg, Chairman, presiding.

Present: Drs. C. N. Chipman, A. C. Gray, Raymond T. Holden, Jr.; R. Arthur Hooe, F. X. McGovern, John F. Preston, John A. Reed, Sterling Ruffin, Henry R. Schreiber and C. B. Conklin. H. C. Macatee.

* * * * * * *

Dr. F. X. McGovern, Chairman of the Subcommittee, that had been appointed to make contact with the HOLC Medical Unit, now was called upon to make a report.

He opened his remarks by stating that pursuant to recommendations made at the last special meeting of the Executive Committee, he had prepared a letter which was sent to Mr. William F. Penniman. In the letter request was made for copies of (1) contract with the HOLC; (2) adopted constitution and by-laws; (3) form or forms of application for membership; and (4) any form of contract or agreement setting forth the service to be rendered to members and their dependents.

Dr. McGovern stated that Mr. Penniman had not given him a written answer. He had called him up and asked that he have luncheon with him at the Raleigh Hotel. On this occasion he frankly stated that he would give responses to the questions asked in the registered letter that had been received. The copy of the contract asked for, he said, he would have to refuse to exhibit. He thought the Medical Society's asking to see this contract was quite similar to going to Garfinckel's department store and asking them to show the contract they had with some firm with which they were doing business.

Dr. McGovern then proceeded to read a prepared report, as follows:

'Known Facts in re the Home Owners' Loan Corporation:

1. Corporation—Group Health Association, Inc.

2. In Home Owners' Loan Corporation with which it has a contract.

3. Mr. W. F. Penniman is president; Mr. R. T. Berry is secretary; Dr. Henry Rolf Brown is Medical Director.

4. Instituted presumably to give medical care (complete) to any and all members of the HOLC who may care to join in.

5. Nonprofit, voluntary, prepayment insurance organization.

6. Must be in some way related, possibly by contract to Home Loan Bank Board.

7. President, Mr. Penniman, avoided replying by letter to an official letter from the Society to him.

8. Mr. Penniman refused to give your committee a list of physicians employed by corporation.

9. Articles of incorporation so worded that all Federal employees, except Army and Navy may belong.

10. President, while he states that purpose of the corporation is to provide medical service to low-income individuals, at the same time admits that constitution and by-laws do not establish any income level.

11. Invites attention to many other similar organizations in existence throughout the country and claims they do the job better than would be otherwise done.

12. The lay members of the Board of Directors sincerely believe that they are performing a needed, helpful and humanitarian function for their employees, and apparently are firmly convinced that nothing that they are doing is in conflict with the established ethical principles of organized medicine.

13. Dr. Brown is a physician, recently retired from the Veterans' Bureau and is being paid a good (under the circumstances) salary as medical director. Licensed in the District of Columbia, May 21, 1937.

14. Whereas the officials of the corporation express a desire to cooperate with the Medical Society of the District of Columbia, it is a fact that in the beginning and at all times there has been no real effort made to apprize the Medical Society of what they were undertaking. They have not considered (officially) the Medical Society during the formative stage of their organization; on the contrary, there seems to have been the desire to keep the matter confidential.

15. Meetings with officials of the American Medical Association on two separate occasions convince us that the national organization is keenly interested in the whole affair and is solicitous as to how we will consider its relation to us locally and what policy the Medical Society of the District of Columbia will adopt in regard to it.

16. What might be done:

1. Consider it unethical.

2. Control of our own members in terms of the ethical requirements of our own constitution and by-laws.

3. Offer a substitute plan of our own.

4. Cope with the situation in the courts in terms of the local Healing Arts Practice Act.

17. Your committee met with the Board of Directors of Group Health Association, Inc. The attitude of organized medicine in regard to the medical ethics in matters of this kind was fully presented to them. Quotations were read to them from the official code of ethics of the American Medical Association. Other relevant facts were presented. The only reply was made by a Mr. Loomis, member of the Board of Directors, to the effect that he hoped that the Medical Society would see fit to withhold final judgment until Group Health Association, Inc., had been in actual operation a sufficient length of time to practically demonstrate its purpose, its relation to the community and to the medical profession of the District of Columbia.

* * * * * * *

The secretary explained just what had been suggested by Drs. William C. Woodward and R. G. Leland at the time of their visit. It would seem that Dr. Woodward would advise quo warranto proceedings, which proceedings would require a district attorney or United States attorney for the District of Columbia, who at least was not hostile, that the suit be filed in his name. He saw many difficulties in following this up. Dr. Leland had given a sketchy verbal outline of a plan whereby a pool of money could be created and this could be built up by either the people in the lower income brackets, or even in the higher brackets, and from this pool the care of the sick could be financed. The secretary stated that the very next morning after the meeting he

wrote to Dr. Leland, asking for full details of the plan. Up to date he had received no reply. The secretary opined that the American Medical Association authorities certainly did not have any definite knowledge as to how to proceed in combatting the immediate problem that was confronting the Medical Society of the District of Columbia.

* * * * * * *

A motion was made concerning the registered letter that was to be sent out with Dr. McGovern's committee's list of approved organizations, groups and individuals, engaged in the practice of medicine, to include the phrase 'to each of the hospitals,' in addition to all members. Seconded and adopted."

Mr. Leahy: Where was that?

Mr. Lewin: That was near the bottom of page 7.

Mr. Leahy: Would you read from page 6, what Dr. Macatee said in that third paragraph?

Mr. Lewin: Yes.

Mr. Leahy: On page 6.

Mr. Lewin: Yes, I'll be right there.

Mr. Leahy: You don't need to read the principles of ethics.

Mr. Kelleher: Yes, I would read the principles.

Mr. Lewin: Yes, I will.

"Dr. Macatee, in continuing, read an excerpt from the latest issue of the Principles of Medical Ethics of the American Medical Association, having to do with the definition of free choice of physicians, as follows:

'The phrase "free choice of physicians," as applied to contract practice, is defined to mean that degree of freedom in choosing a physician which can be exercised under usual conditions of employment between patient and physician when no third party has a valid interest or intervenes. The interjection of a third party who has a valid interest or who intervenes does not per se cause a contract to be unethical. A "valid interest" is one where, by law or necessity, a third party is legally responsible either for cost of care or for indemnity. Intervention is the voluntary assumption of partial or full financial responsibility for medical care. Intervention shall not prescribe endeavor by component or constituent medical society to maintain high quality of serv-

ice rendered by members serving under approved sickness service agreement between such society and governmental board or bureaus and approved by the respective societies.

The ambiguity of the situation was immediately apparent.

Dr. Macatee said that he certainly did not read this at the time of the meeting with the H. O. L. C. unit. He did, however, read on that occasion extensively from the Principles of Medical Ethics under which the medical profession is bound, showing that the project as at present constituted could not be expected to be approved by the Medical Society of the District of Columbia, the local unit of the American Medical Association.

Dr. Macatee was rather inclined to think that there should be no hasty action taken at this time and that he would recommend that the four possible solutions as prepared by the subcommittee be not read before the Medical Society. He too thought that it might be possible to bring some accord with the Group Health Association."

Gov. Ex. 37 read from to jury as follows:

"Minutes of the Special Meeting of the Medical Society of the District of Columbia, July 29, 1937. (Excerpt)

Dr. Thomas E. Neill, president, presiding.

Present: Drs. J. Lawn Thompson, William J. Mallory, C. N. Chipman, F. X. McGovern, James A. Flynn, Prentiss Willson, A. F. Tibbets, John H. Lyons, William P. Herbst, Victor B. Reich, Victor R. Alfaro, S. B. Muncaster, Harry S. Lewis, Oscar Wilkinson, Herman E. Kittredge, Isadore Lattman, Henry B. Gwynn, Joseph Horgan, J. Russell Verbrycke, Jr., and other members of the number of about 150.

Upon motion, duly seconded, the reading of the minutes of the preceding meetings was dispensed with.

. . . . . .

The Executive Committee makes the following recommendations:

That the chairman of the Executive Committee appoint three of its members to act as a subcommittee, they to add two members of their selection from the Society at large, for the purpose of further studying the Group Health Association, Inc., with a view of bringing back to the Executive Committee a solution concerning what the Society's attitude should be to the above Group Health Association, Inc.,

and to report to the Executive Committee at the next regular meeting.

Dr. J. Lawn Thompson made a motion that the report of the Executive Committee be adopted. Seconded.

Dr. Thompson, in discussion of the recommendation of the Executive Committee was of the opinion that if the report was to be made to the Executive Committee at the next regular meeting, it would probably be too late to do anything, for by that time the Home Owner's Loan Corporation will be in full action. He felt that a special meeting should be held in the near future; not only from the medical standpoint, but from the standpoint of the Chamber of Commerce and Board of Trade this should be considered.

* * * * * * *

Dr. McGovern was called upon to discuss the question. He stated that he was the chairman of the subcommittee of the Executive Committee that investigated this matter thus far. He brought out the fact that the purpose of this meeting tonight was to inform the membership of the situation and to familiarize them with the facts obtained to date with an idea of turning it over in the minds of the membership and arriving at some conclusion as to how the Society should act in the matter. He felt that it was apparent from the report that the Group Health Association was not willing to come clean. It was specifically stated that Mr. Penniman, its president, refused to comply in writing to an official communication addressed to him from the Society. In that letter four specific requests were made: that they submit copy of any contract they may have between the Group Health Association and the Home Owner's Loan Corporation with the Federal Home Loan Bank Board; copy of their constitution and by-laws; and any contract that may be in existence in relation to the members of this corporation; and any other matter that would be of importance to the Medical Society. Dr. McGovern pointed out that the communication was sent by registered mail. Mr. Penniman called him by telephone asking that he have luncheon with him where these matters would be discussed. After consulting with officials of the Society Dr. McGovern accepted the invifation to meet Mr. Penniman at luncheon at the Raleigh Hotel. Dr. McGovern made it emphatic that he was not authorized to commit the

Society in any way. Mr. Penniman was willing to give some of the information desired, but when asked for the contract between the Group Health Association and the Federal Home Loan Bank Board, he refused, stating that the Medical Society had no more right to ask for that than they would to go down to Garfinkel's department store and ask to see a contract that the store had with an express company, for instance. Dr. McGovern felt that it was definite that they had some sort of contract and they are not desirous that anybody should see it. In this connection he would add that the American Medical Association, through Dr. W. C. Woodward, tried diligently, spending a whole day in the building of the Home Owner's Loan Corporation, going from office to office, trying to get a glance at the contract without success. Dr. McGovern felt that the contract itself did not interest the Medical Society as much as it did interest the A. M. A. If there is a connection between the Federal Ho[illegible] Loan Bank Board and the Group Health Association, and the Board is spending money, they are spending taxpayers' money which makes it a national entity. As far as the panel of doctors is concerned, Mr. Penniman said he did not think it was appropriate for the Medical Society to have a list of the panels of physicians who have already been employed. He added that it is a well-known fact that members of the Society have been approached. It also is a well known fact that doctors have been asked to come in from the outside and that Dr. Brown has talked to them.

Dr. McGovern said that property had already been leased for the housing of the clinic on I Street, between Thirteenth and Fourteenth Streets. There was no doubt in his mind that the lay members of the Board of Directors of the Group Health Association are thoroughly convinced that they are doing a splendid thing for their employees. He was further convinced that they are not doing anything that might be considered unethical by them.

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Dr. Prentiss Willson would inquire what information the committee had with respect to hospitalization of the patients who require hospitalization under the Group Health Association.

Dr. McGovern stated that in the articles of incorporation they are going to give complete medical care and hos-

pitalization. It would not be found out as to how they plan to do that. He pointed out that it is incorporated to include all Federal employees, except Army and Navy. He thought possibly they would have the free use of the local hospitals."

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Dr. H. C. Macatee was recognized. He reiterated the plan of the chairman of the Executive Committee that if any members had ideas on this subject, or information about it they should submit it to the committee for investigation. He said he would like to express his personal feeling about this matter, for whatever value it may have. He was of the opinion that the medical society should not take its attitude based on the idea that there are certain scurrilous people who are trying to do a scurrilous thing to the Medical Society and doing it in an underhanded, scheming way. It was his impression, gained from conduct with certain individuals, that they are highly intelligent people who have profoundly studied this subject, who are aware of all the social currents flowing through the country with respect to the relation of the medical profession and the people. They are aware of what has been done elsewhere and the result. 'My feeling is that this is a group of responsible, honest, rather public-spirited people, who are undertaking to do something for the benefit of their associates in office. They are convinced and have secured what they call competent advice that they are on secure legal ground. They have by reason of their knowledge of similar projects elsewhere become convinced that wherever such organizations spring up they almost consistently receive the antagonism and the animosity of the local medical profession.' Dr. Macatee added that he was of the opinion that their desire to avoid publicity in this matter was due to their knowledge of that fact. So far as Dr. Henry Rolf Brown was concerned, Dr. Macatee stated that he has had a distinguished service in the Veterans Bureau where he was highly esteemed. He was retired on account of age and feels that he is not old enough to be put on the shelf. Dr. Brown has been detached from the organized profession for a long time. He, Dr. Macatee, said that he for one did not blame Dr. Brown for taking the position.

Dr. Macatee, continuing, stated that they had evidently obtained advice from the Twentieth Century Foundation and are perfectly aware that similar organizations, such

as the Endicott Johnson Medical Service, which was fought tooth and nail by the county and New York State Medical Society; also the Ross-Loos Clinic of Los Angeles, which was likewise fought tooth and nail by the California organized medicine to the point that the members of that outfit were expelled from membership and then by court order were reinstated, were in operation. It was because of all these facts that the Executive Committee recommended that this matter be recommitted for further study as to what will be wise for the membership as well as the public.

Dr. Macatee added that there is now available a list of corporations and organizations and persons employing physicians in a contractual relationship, prepared under the provisions of the constitution and by-laws. He urged the members to take the list and examine it carefully, and familiarize themselves with its contents.

* * * * * * *

Dr. Hooe said he believed he was in a position to answer Dr. Willson's question concerning hospitalization. He was of the opinion that it was the intention of this corporation for the present to have their beneficiaries hospitalized in the local hospitals and treated by their hired physicians.

At this point Dr. Sprigg reread the recommendation of the Executive Committee, as amended:

That the Chairman of the Executive Committee appoint three of its members to act as a subcommittee, that they were to add two members of their selection from the Society at large, for the purpose of further studying the Group Health Association, Inc., with a view of bringing back to the Executive Committee a solution concerning what the Society's attitude would be to the above Group Health Association, Inc., and to report to the Executive Committee, subject to the call of the Chairman.

Duly seconded and adopted.

The secretary stated that it was the duty of the Society's office to fulfill instructions from the Executive Committee to supply each member of the Society with a copy of the approved list that had been prepared, pursuant to Chapter IX, Article IV, Section 5, of the constitution. He pointed out that they were being mailed by registered mail. He announced that any member wishing to secure his list to-

night could do so by applying at the Society's office and signing for same, which would aid in the distribution."

The Court then ruled upon the admissability of certain documents upon which decision had been reserved (ante page 232). The objections to the following exhibits were overruled and exceptions were allowed: Gov. Exs. 73A and 151.

Gov. Exs. 73A and 151 were received in evidence.

The following exhibits were read to the jury, as follows:

Gov. Ex. 186 is a letter from John F. Hayes of Washington, D. C., to Dr. William C. Woodward, dated July 31, 1937;

"DEAR DOCTOR WOODWARD:

I attended the special meeting of the District Medical Society on the night of July 29th. This special meeting was called for the purpose of hearing the report of the special subcommittee appointed to secure facts and information regarding the Group Health Association, Inc.

I am assuming that Dr. F. X. McGovern, Chairman, has sent to you a full and detailed report to you.

I do not know that you expect any word from me relating to the meeting. It may be stated, however, that there were present about 150 members of the Society. Dr. Sprigg read a formal and somewhat lifeless report reviewing the facts and information which had been obtained regarding the Group Health Association, Inc. Nearly all of his facts were substantially the facts which you and Dr. Leland had supplied to the group which attended the meeting here about two weeks ago.

In so far as I could observe, there was no new information in the Sub-Committee's report, except that it did set out the fact that the Committee had by registered letter invited or requested the President of the Group Health Association, Inc., to furnish the Sub-Committee certain information including:

(1) A copy of its rules and by-laws;

(2) A list of the physician personnel of the organization;

(3) A copy of its contract with the Home Owners Loan Corporation.

President Penniman replied by telephone, inviting the Committee to lunch with him at the Raleigh Hotel. Nothing

worthy of a review happened at the luncheon, except that Penniman agreed to supply a copy of the rules and by-laws when printed and a list of physicians when the staff had been filled. He refused to supply a copy of the contract on the ground that it was really the property of the Home Owners Loan Corporation, or some such reason.

There was then about twenty minutes of general discussion by members of the Medical Society, in which Doctors Sprigg, McGovern and Macatee took active part. Doctor McGovern mounted the rostrum and made a very clear, able and comprehensive review of this entire subject and presented his subject in a manner which impressed his hearers and showed the seriousness of the entire movement.

His remarks had the effect of creating alarm and was just what was needed, because the reading of the Sub-Committee's formal report was lifeless and stilted and made no impression—in my opinion.

The Medical Society then approved the formal report and—as I understood—instructed the Sub-Committee to investigate further as to methods and means of meeting the situation and report at a future time.

Nothing whatever was said on the subject of legal proceedings either in the report or in the discussion. Mr. F. A. Fanning, attorney for the Association, was not present. Your name was not mentioned nor was the name of Dr. Leland mentioned.

The above are my impressions of the meeting. If I have made any error in the state of facts, please understand that you should be guided by the report of Dr. McGovern who of course is in position to supply more accurate and come complete information than I.

Very truly yours, John F. Hayes."

Gov. Ex. 187 is a carbon copy of a letter from Dr. Woodward to Dr. Conklin dated August 12, 1937:

"DEAR DR. CONKLIN:

Sometime ago I wrote to Dr. McGovern, asking him to inform me concerning the results of the special meeting called by the Medical Society of the District of Columbia to consider the activities of the Group Health Association. In the course of a recent visit to Washington, Dr. McGovern told me that he was no longer on the Committee having charge of the matter and that he had referred my letter

to you. Will you not let me know what was done by the Society and what the present situation is?

Yours truly, ——, Director."

Gov. Ex. 188 is the reply of Dr. Conklin to Dr. Woodward dated August 14, 1937:

"DEAR DR. WOODWARD:

In reference to your inquiry of August 12, concerning the present status of the Medical Society's deliberations, I would state a Committee at present constituted as follows:

Dr. A. C. Macatee, Chairman
Dr. R. Arthur Hooe
Dr. Thomas A. Groover
Dr. C. B. Conklin

has been organized for the purpose of giving further study of the Group Health Association with view to making recommendation to the Executive Committee as to the Society's attitude in the premises. At the special meeting of the Medical Society to which you make reference and which was attended by some ninety members with Mr. Hayes present, a detailed report was made of the various contacts with the Home Owners' Loan Corporation Group. Various opinions were expressed by individual members ranging from the taking of most drastic measures in the way of boycott, etc., to various conciliatory propositions. Finally, an Executive Committee recommendation was accepted to the effect that the Chairman of the Committee appoint a subcommittee of three members which in turn would select two members from the Society at large. The function of the Committee would be to seek further data and bring a recommendation to the Executive Committee as to plans for a course of action. The aforesaid Committee has had one meeting. An expressed policy is to receive reports from any individual members and to obtain proposed plans from members as to course of procedure.

It will give me pleasure from time to time to report any developments. In the meantime, the Committee would be very much pleased indeed if the American Medical Association Headquarters would wish to be represented at any of its meetings, or would have any proposals to combat the movement which has implications affecting far greater territory than the District of Columbia.

Very truly yours, C. B. Conklin, M. D., Secretary."

Gov. Ex. 181 is a carbon copy of a letter from Dr. Woodward to Mr. John F. Hayes, Washington, D. C., dated August 21, 1937:

"DEAR MR. HAYES:

Will you not sometime within the coming week learn what you can concerning the activities of the Group Health Association, with particular reference to the establishment of its clinic and the publication of the names of the members of its medical staff. You may recall that the association proposed, according to the newspapers, to open September 1.

Confidentially, I am preparing an article on the situation and would like to have the latest details.

Say nothing to Conklin or anyone else about my plans for publication.

Yours truly, —— ——, Director."

Gov. Ex. 182 is the reply of John F. Hayes to Dr. Woodward dated August 24, 1937:

"DEAR DR. WOODWARD:

I regret that efforts made yesterday and today to secure information regarding Group Health Association, Inc., through the District Medical Society, have not been very successful.

Dr. Conklin is out of the city. A New Committee or Sub-committee was appointed consisting of Dr. Henry C. Macatee, Dr. R. Arthur Hooe, Dr. Thos. A. Groover, and Dr. F. X. McGovern. Nearly all of these doctors are out of the city. I was able to speak to Dr. McGovern on the telephone, but he had no up-to-date information other than the fact that the Medical Society will hold another meeting on this particular subject on September 10th.

On some independent investigation of my own, I learned that the clinic of this Association is to be located at the Evans Electrical Building. I called there, and observed that this is a small but attractive two store building owned and occupied by the O. R. Evans and Bro. Inc., dealers in electric fixtures and lamps, etc. This firm occupies the first floor and it has on hand and present in all directions a large supply of floor lamps, and fine merchandise of that character.

I inquired for the offices of the Group Health Association and was informed that they have leased the second floor of this building. Thereupon I went to the second floor; there is no elevator. The second floor was entirely unoccupied. This entire floor is one enormous room, approximately 25 feet wide and possibly 70 or 80 feet long. At the present time it has no partitions, few if any electric lights; the walls and ceiling and floors require reconditioning. In my judgment it will require at least four or five weeks to put this second floor space in anything like working condition.

This O. R. Evans and Bro. building is located at 1326 Eye St., N. W. If the affairs of the Group Health Association are to be conducted from these headquarters it is my opinion that they are starting in most modest and unassuming style.

Thereupon, I returned to my office and called on the telephone the office of Mr. Wm. F. Penniman, of the Home Owners' Loan Corporation. Incidentally, I observe, from the Congressional Directory, that he is Assistant General Manager for District No. 6, comprising the State of Arizona, California, Idaho, some other states and Hawaii and Alaska.

I asked the young lady if she could supply me with any printed information regarding the Group Health Association. She referred me to the Home Owners' Loan Corporation Publicity Man, Mr. Acton. Thereupon I went to Mr. Acton's office and was informed by him that no news matter had as yet been prepared by him; that such matter as had appeared in the local papers was premature and without official sanction.

He stated that their clinic on Eye Street had not yet been started and that it would be several weeks before there would be any news to give out. He suggested that I call upon Mr. Penniman for further information. In view of the experience of the Committee of the District Medical Society at the luncheon given by Mr. Penniman to that group I considered it the part of wisdom to confer with Mr. Penniman at some remote time in the future.

Dr. Conklin may return to Washington Saturday, and if so I will see him then and report further to you.

Very truly yours, John F. Hayes."

Gov. Ex. 37 was read from to the jury as follows:

"Minutes of the Special Meeting of the Executive Committee of the District Medical Society of September 8, 1937. (Excerpt)

"Dr. William Mercer Sprigg, Chairman, presiding.

Present: Drs. E. G. Breeding, Charles B. Campbell, D. N. Chipman, William T. Gill, Jr., A. C. Gray, R. Arthur Hooe, Henry C. Macatee, F. X. McGovern, Thomas E. Neill, John A. Reed, E. Hiram Reede, Sterling Ruffin, Henry R. Schreiber, Earl R. Templeton, R. Lomax Wells, C. B. Conklin; Thomas A. Groover, by invitation.

The Chairman announced that the special meeting was called to hear a report of a subcommittee of the Executive Committee, which had been appointed pursuant to action of the Society taken on the evening of July 29, 1937.

The Secretary was called upon to make a report in the absence of the Chairman of the Subcommittee, Dr. H. C. Macatee. It was stated that during Dr. Macatee's absence from the city during the month of August, Dr. R. Arthur Hooe and committee members thought that owing to a clamor for action that had been set up by certain Society members, it was incumbent upon the committee to hold a meeting. At a meeting, which was held in the office of Dr. Thomas A. Groover, it was adopted that Dr. Thomas A. Groover and Dr. F. X. McGovern be duly appointed from the Society at large as members of the Subcommittee. It was conceived that the function of the committee was to consider the Group Health Association cooperative medical service movement, with view, if possible to stating the Society's attitude and also, if possible, to offer plans for combat. The second meeting was held in Dr. Groover's office and a final meeting on this evening in the Society's office. The following is given as a statement of opinion of the committee at this time:

1. That the Group Health Association is unethical and that the participation in it by any member of the Medical Society of the District of Columbia would render him or her subject to disciplinary action by the Society.

2. Your committee at this time has no definite recommendation to make with respect to combatting the activities of

the Group Health Association other than is embodied by implication in the preceding paragraph.

3. It is the opinion of your committee that the Medical Society of the District of Columbia should maintain close contact through the chairman of this committee with the American Medical Association in an effort to formulate a suitable and an effective policy with respect to combatting the activity of the Group Health Association.

It was explained that Dr. Macatee had been duly notified of the committee's activities during his absence and also that it was the desire of the committee to hold a meeting just previous to the meeting of the Executive Committee on this evening. Dr. Macatee had stated over the telephone that his afternoon was very well taken up and it would be impossible for him to be present.

Upon motion, duly seconded, the Executive Committee unanimously accepted the report of the Sub-committee.

At this point Dr. R. Arthur Hooe called on Dr. F. X. McGovern to state his views.

Dr. McGovern said that he looked upon this Group Health Association movement as an organization coming in and interfering with his business. He added that he expected to be in practice for some 20 years and he did not propose, if it could be avoided at all, to have an organization such as was proposed to interfere with his work and income. 'Just what are you fellows going to do about it?' He cited the instance of the musicians who had succeeded in preventing the Marine Band from cutting in on their business in playing before assemblies without cost to the sponsors. Through the organized musicians activities not only was this Governmental agency, the Marine Band, stopped from so proceeding but an adequate salary had been obtained for each of the Marine Band musicians. The lawyers as a group had prevented inroads in their business. 'It just doesn't seem that we are active in preventing the National Government from entering the practice of medicine and interfering with our business. It should be demanded from the American Medical Association that they send a man down here now and see just what could be done.'

Dr. T. A. Groover stated that he heard of no plan that was practical in opposing this group practice. 'If we would hire a lawyer, I doubt seriously whether it would do any

good, as apparently there is nothing illegal in what is being contemplated. There is one other suggestion, that the Medical Society set up a health insurance program to combat.' He thought that this would be a tremendous undertaking and should not be done without American Medical Association assistance.' It should be recognized that what happened in England, along about 1910-1912, was that there were active certain prepaid insurance plans, the finances and management of which had gotten so chaotic that these various groups literally begged the Government to take them over and run them. The members of the Society should know that most every large country has now some form of health insurance. The English profession support their plan. Health insurance seems to work better in the Scandinavian countries. These countries are small and thrifty and have not been in a war for 100 years or more but have profited tremendously from the wars that have been carried on about them.

. . . . . .

Dr. Sterling Ruffin stated that it was apparent that all were opposed to the activities of the group organization. He thought that the report, as submitted, should go back to the committee for revision; that the American Medical Association should be contacted, gaining assurance that they approved what would be the result of the subcommittee's deliberations. Dr. Ruffin made a motion to this effect."

Gov. Ex. 190 is a carbon copy of a letter from Dr. Woodward to the defendant Dr. Conklin, Secretary of the District Medical Society, dated September 8, 1937:

"Dear Doctor Conklin:

Our Executive Committee and Board of Trustees meet in Chicago next week, September 15, 16, and 17. They are much interested in developments with respect to Group Health Association, particularly with respect to any activities and plans of the Medical Society of the District of Columbia in relation to it. If you drop me a line giving the latest information available, in time for me to have your letter mimeographed for the use of the Executive Committee and the Board, I shall appreciate it.

Yours truly, ————, Director."

Gov. Ex. 84 is a letter from Dr. Conklin to Dr. Woodward, dated September 13, 1937:

"Dear Doctor Woodward:

In reference to your letter of inquiry under date of September 8, 1937, I would state that there have been no further developments of importance relative to the Group Health Association.

There is a subcommittee of the Executive Committee, about which you may have information, constituted as follows:

Henry C. Macatee, Chairman, R. Arthur Hooe, Thomas A. Groover, Francis X. McGovern, Coursen B. Conklin. This committee reported at a special meeting of the Executive Committee that it had no substitute plan to offer at this time; and further, that in view of apparent violation of the Code of Ethics of the American Medical Association in that free choice of physician would not be allowed, and that contract practice was involved, no approval could be given to the movement. The general statement of the subcommittee, as imparted to the Executive Committee, was as follows:

'It is the opinion of your committee:

1. That the Group Health Association is unethical and that the participation in it by any member of the Medical Society of the District of Columbia would render him or her subject to disciplinary action by the Society.

2. Your committee at this time has no definite recommendation to make with respect to combating the activities of the Group Health Association other than is embodied by implication in the preceding paragraph.

3. It is the opinion of your committee that the Medical Society of the District of Columbia should maintain close contact through the chairman of this committee with the American Medical Association in an effort to formulate a suitable and an effective policy with respect to combating the activity of the Group Health Association.'

The Subcommittee was instructed by the Executive Committee to prepare, for distribution to the members and the press, a detailed statement of attitude. This is now in formulation.

Our recent information is that there has been no progress in the conversion of a second-floor building on Eye Street, between Thirteenth and Fourteenth Street, into clinic headquarters. The large barren room itself appears devoid of any accessories such as proper lighting, plumbing, etc., for the successful carrying on of their project.

Very truly yours, C. B. Conklin, M.D., Secretary."

Gov. Ex. 37 was read from to the jury as follows:

"Minutes of the Regular Meeting of the Executive Committee of the Medical Society of the District of Columbia, of September 27, 1937. (Excerpt)

Dr. William Mercer Sprigg, Chairman, presiding.

Present: Drs. A. B. Bennet, Daniel L. Borden, Charles B. Campbell, C. N. Chipman, Augustus C. Gray, Raymond T. Holden, Jr., R. Arthur Hooe, H. C. Macatee, F. X. McGovern, Thomas E. Neill, John A. Reed, E. Hiram Reede, Sterling Ruffin, Earl R. Templeton, R. Lomax Wells, and Coursen B. Conklin.

• • • The Chairman, at this point, called on Dr. H. C. Macatee, Chairman of a Subcommittee to consider the Group Health Association, Inc., for a report. The report was read, Dr. Macatee stating that there had been two meetings of the committee and that the committee recommended the following for presentation to the membership:

At a special meeting of the Medical Society of the District of Columbia, held July 29, 1937, the membership was advised of all the facts that the executive Committee had been able to gather respecting the purposes, proposed methods, and progress of a corporation, composed of employees of the Home Owners' Loan Corporation, now in process of organization, the object of which is to provide complete medical, surgical and hospital care for its members and their dependents, upon a prepayment plan of the financial support through membership dues. The professional services offered by the corporation are to be supplied by a full-time, salaried staff of medical and other technical employees. The name of the organization is Group Health Association, Incorporated, of the Home Owners' Loan Corporation.

The Executive Committee recommended at the special meeting that the Society authorize a further study of the

subject by the Committee in order to enable it to report suitable recommendations to the Society looking to the formal adoption of an official attitude toward this proposed new type of medical practice, unfamiliar to this community. Such an expression of the Society's attitude is necessary for the guidance of our membership, both with respect to possible employment by the corporation and with respect to professional relationships to its medical and technical employees when and if it shall have begun to function.

The Executive Committee finds: First, that employment by or professional relations with the Group Health Association, Incorporated, on the part of our members would be conditional upon approval of the organization by the Society as required by Chapter IX, Article III, Section 2, of the Constitution; that no application has been made by any member or by the organization itself for such approval; and that consequently there has been no submission of the data required for approval to the Compensation, Contract and Industrial Medicine Committee of the Society.

The Committee finds: Second, that the conditions of rendering the medical and surgical service offered by Group Health Association, Incorporated, as set forth in such written promulgations of the organization the Committee has been able to see and as indicated verbally by officers of the corporation, appear to be inconsistent with the criteria for an acceptable form of contract practice as set forth in Chapter III, Article VI, Section 3, of the Principles of Medical Ethics of the American Medical Association, by which we are obliged to be guided. In particular it would appear that at least two of the criteria would necessarily be violated, viz.: '1. Where there is solicitation of patients, directly or indirectly'; and '5. When free choice of a physician is prevented.' In the first instance, it is obvious that the solicitation of employees of the H. O. L. C. to take membership in Group Health Association, Incorporated, is an effort to entice many away from medical relationships already formed to the medical personnel of the corporation. This effort would raise the question whether a further criterion of an acceptable contract is violated, viz.: '4. When there is interference with reasonable competition in a community.'

However, the criteria above quoted must be applied in the light of experience, and we are required by the same Principles of Ethics to exercise prudence in forming opinions: 'Judgment should not be obscured by immediate

temporary or local results.' In any form or instance of contract practice 'The decision as to its ethical or unethical nature must be based on the ultimate effect for good or ill on the people as a whole.'

The Executive Committee, therefore, recommends the adoption of the following:

Resolved, That a final expression of the attitude of the Medical Society toward the acceptability of any cooperative medical service organization as an approved agency for the employment of members is manifestly impossible without the submission of all related data as a basis of approval, and manifestly undesirable when information is lacking as to whether any such group will ever become operative; and

Resolved, That the membership be reminded of the requirements of Chapter IX, Article III, Section 2 of the Constitution for their guidance with respect to Group Health Association, Incorporated, of the H.O.L.C.; and

Resolved, That the Medical Society recognizes a growing desire in Washington for some feasible plan of cooperative group medical service on a prepayment basis; that it recognizes the value of such an arrangement for many people of limited incomes; and that, having already provided a means in the Health Security Administration, for the people without ready money to secure medical service on a postpayment plan, it is willing to collaborate with appropriate, responsible groups to devise methods for group prepaid medical service mutually acceptable to the two essential parties to such an agreement, viz.: the group needing and proposing to pay for the service and the group capable of furnishing it; and

Resolved, That, if hereafter it shall appear necessary or desirable, the Board of Medical Supervisors of the District of Columbia be requested to determine, by judicial decision if necessary, whether the operation of Group Health Association, Incorporated, or any similar organization, is or will be in conformity with the Healing Arts Practice Act for the District of Columbia.

Dr. Macatee, upon concluding reading, stated that the Journal of the American Medical Association would publish in its issue of October 2, 1937, a detailed analysis of the Group Health Association, Inc., pointing out weak points from a legal viewpoint. It began with the statement that

Title 5, Chapter 5 of the District Code was taken advantage of, which had to do with the mutual welfare of individuals in organizations. It was clear that the Government was definitely embarking in the insurance business and that the check-off from the Government payroll would have all of the evil points that were included in checkoff in the factories for union dues. The American Medical Association's statement would cover four or five pages in the Journal. It was emphasized that this material was not for release until September 29. Dr. Macatee stated that it was his view that despite this article appearing in the A. M. A. Journal, that there should be no hesitancy in adopting the report of the Subcommittee.

Dr. Sterling Ruffin and others agreed with this view.

Dr. F. X. McGovern was recognized. He stated that he thought the report was very good but rather weak. He thought conditional verbs should be eliminated and indicative mode used. For instance, it was stated certain things appeared to be. He thought a direct statement should be made here that there was definite violation of ethics and of the principles of good medical practice. It was his opinion that the Secretary should get sufficient reprints to supply the entire membership and that the prepared statement as presented by Dr. Macatee withheld.

The Secretary stated that he was present at the time of the preparation of the report submitted by Dr. Macatee. He was of the opinion, after hearing for the first time the American Medical Association's statement that certainly the third resolution, having to do with the idea that some prepayment plan taking care of individuals in Washington should be adopted and that there was a definite sentiment abroad for same, should be stricken out as it appeared to him that it would conflict with the American Medical Association's arrangement of the disapproval of the Government's prepayment plan. A demarcation should be drawn between the Government entering the practice of medicine with an insurance scheme and private firms in other states which were not apparently meeting with success in propagating health insurance.

Although this view was supported by a few members present it was unanimously adopted that Dr. Macatee's report, as presented, be accepted with recommendation of adoption by the Society.

Dr. Macatee made a motion that he thought might take care of some of the objections to the report, that the following resolution be added:

Resolved, That the attention of the membership be directed to a critical analysis of Group Health Association, Incorporated, prepared by the Bureau of Legal Medicine and legislation of the American Medical Association to appear in the Journal of the American Medical Association for October 2, 1937; and that the membership be admonished to read the entire article for their information and guidance.

This resolution was unanimously adopted."

Mr. Leahy. Just read what Dr. Hooe stated.

"Dr. R. Arthur Hooe was especially strong in advocating the adoption of Dr. Macatee's presentation. He thought that the Medical Society might be accused of selfish motive if it eliminated any of it."

A copy of a letter from Dr. Yater to Dr. Macatee, dated August 23, 1937, attached to the minutes was read to the jury as follows:

"Georgetown University Hospital

August 23, 1937.

Dr. Henry C. Macatee
26 Columbia Avenue
Rehoboth Beach, Delaware

DEAR DR. MACATEE:

I suppose you have heard that the Hospital Superintendents' Association has requested the Central Admitting Bureau to sever relations with the Medical-Dental Service Bureau and to act as a collecting agency itself on the accounts of patients aided by the Community Chest. This, of course, would be the death knell of the Medical-Dental Service Bureau.

Personally, I can see no great advantage to be gained for the hospitals by making this change. The amount of saving possibly would be relatively little since the Central Admitting Bureau would have to increase its staff, its

space and equipment. So far as I can learn, no one has demonstrated that there would be any substantial saving.

Furthermore, it was decided in the very beginning that the function of the Central Admitting Bureau was that of a clearing house and a disbursing agency and that it would have nothing to do with collections. Also it can be shown in black and white that the Medical-Dental Service Bureau has done an excellent job of collecting bills for hospitals considering the class of patients involved.

If the business of the hospitals is withdrawn from the Medical-Dental Service Bureau, this change will cut the income of the Medical-Dental Service Bureau to approximately $600 a month which will be insufficient to do a good job with. Since it seems to have been forgotten, I would like to point out that the Medical-Dental Service Bureau has always paid more than its share toward the rent, phone service and upkeep of the Medical Security Building. This fact should certainly be pointed out to the hospital superintendents.

Since it appears, therefore, that the proposed change would ruin the Medical-Dental Service Bureau, which was established by the organized medical and dental professions of the District of Columbia for the purpose of aiding the underprivileged sick, and since the change could not possibly bring about substantial saving to the hospitals, I believe a very strong appeal should be made to the hospital superintendents, preferably individually, to reconsider this request in the light of the above facts. The hospitals must take a more liberal attitude toward the Washington plan. We cannot afford to have it destroyed. The hospitals must be made diplomatically to see that they exist only for the purpose of making it possible for physicians to better care for sick people and that these physicians have developed and are administering the Washington plan. The hospitals cannot afford, in my opinion, to disregard the wishes of the medical profession, especially since the formation of the new Doctors' Hospital indicates dissatisfaction with the hospitals as they are now run.

Although I am no longer officially connected with the Central Admitting Bureau nor the Medical-Dental Service Bureau, I feel so strongly about this matter that I am willing to do most anything to prevent destruction of a structure which we have all strived so hard to build up. I hope you will see it the same way that I do and will go to bat

against the proposed change. Please let me know of what assistance I may be in the matter.

With warm personal regards, I am,

Very sincerely yours, Wallace M. Yater, M. D."

Gov. Ex. 189 was read to the jury as follows:

"American Medical Association,
Bureau of Legal Medicine and Legislation,
William C. Woodward, M. D., LL. M., Director.

September 1, 1937.

To the Board of Trustees,
American Medical Association:

At the meeting of the Executive Committee of the Board of Trustees of the American Medical Association, June 29, 1937, a resolution was adopted authorizing the Editor and the Secretary and General Manager to inform the medical profession of the country as to the efforts of the Home Owners' Loan Corporation to enter upon the practice of medicine and as to the present status of the proposal to organize cooperatives by the Government. In response to your request for information concerning the matter, I submit the following report.

Respectfully, Wm. C. Woodward, M. D., LL. M., Director, Bureau of Legal Medicine and Legislation."

"Memorandum for Dr. West and Dr. Fishbein:

To avoid possible conflict on my part with the attached Canons of Professional Ethics of the American Bar Association, I am submitting the accompanying material to you in the form of a report. If you decide to publish it, I hope that my letter will be published along with it so as to make my status clear. If you think the letter should be addressed to you or to either of you, change can be made accordingly.

The minutes of the meeting of the Executive Committee, June 29, 1937, show the adoption of the following resolution:

'Doctor Bloss moved that the Editor and the Secretary and General Manager be authorized to proceed to inform the profession of the country as to the efforts of the

HOLC to enter into the practice of medicine and as to the present status of the proposal to organize cooperatives by the Government. Doctor Hayden seconded the motion and it was carried.'

W. C. W."

Attached is a document entitled "Extract from Canons of Professional Ethics, American Bar Association," and an article entitled "Group Health Association, Incorporated, Unlicensed Health Insurance and Corporate Practice of Medicine under Federal Auspices."

Gov. Ex. 293, a portion of the Journal of the AMA for October 2, 1937, was read from to the jury as follows:

"Organization Section of the Journal of the American Medical Association.

Devoted to the Organizational, Business, Economic and Social Aspects of Medical Practice.

Saturday, October 2, 1937.

Group Health Association, Incorporated, Health Insurance and Corporate Practice of Medicine Under Federal Auspices

Prepared by the Bureau of Legal Medicine and Legislation

Unlicensed and unregulated health insurance and corporate practice of medicine in the District of Columbia, and wherever else in the world a civil officer or employee of the United States government may be found, are proposed in a certificate purporting to be a certificate of incorporation, filed on behalf of Group Health Association, Inc., in the office of the Recorder of Deeds, of the District of Columbia, Feb. 24, 1937. The certificate makes eligible for membership every employee of every branch of the United States government, other than officers and enlisted men of the army and navy. It attempts to authorize the association—

To provide, without profit to the corporation, for the service of physicians and other medical attention and any and all kinds of medical, surgical and hospital treatment to the members hereof and their dependents, and the construction and operation of a clinic and medical office building, and the construction and operation of a hospital in the manner permitted by law, for the members hereof and

their dependents, and the operation of a drug store or pharmacy, and the providing of nurses and of drugs and remedies for the members hereof and their dependents, and the furnishing of all forms of hospital service and attention to the members hereof and their dependents, and in general the giving to the membership of this association and their dependents of all forms of care, treatment or attention that may be required by the sick or in the prevention of disease.

The Federal Home Loan Bank Board, a fiscal agency of the United States government, is sponsoring Group Health Association morally and through a contract of such a character that neither the Federal Home Loan Bank Board nor Group Health Association is willing to make it public.

Origin of Group Health Association

The development of a health insurance organization among employees of the federal government in the District of Columbia, to pay benefits to its members in the form of medical and hospital service and not in cash, was foreshadowed by an anonymous nineteen page prospectus, marked 'Confidential: For Private Circulation Only,' that came to light in the early part of the current year. It offered 'A Plan for a Cooperative Medical Service on a Periodic Payment Basis for Federal Employees and Their Families In Washington.' The prospectus said:

> The aim of this plan is to make available to Federal Employees in Washington, and to their families, adequate medical care, both preventive and curative; to provide this care at moderate cost; and to place that cost on a regular, budgetable basis within the means of the group to be served. If Federal employees are typical of the general population with equivalent incomes, many do not now obtain adequate medical care, especially preventive service and care in chronic conditions, while many others incur disastrous debts each year because of sickness costs. The provision of better care should promote health and wellbeing and reduce time lost from work because of illness. The plan should be of benefit not only to the employees and their families, but also to the Government they serve.

The prospectus stated incidentally that 'federal employees lose approximately 7 days a year from work because of illness,' but it did not purport to justify the proposed organization of a health insurance association on

the basis of and study of the nature and extent of illness among federal employees and their dependents, nor on the cost of such illness to such employees or to the government. Later, however, after Group Health Association had been organized, its president, by way of justification or excuse, asserted that the association was the result of studies of health conditions among the employees of the Federal Home Loan Bank Board and its affiliated agencies. No report of any such studies, however, their methods and results, has ever been made public. Admittedly, too, even the secret study referred to did not include a parallel study of sickness among employees of the federal government other than those in the Home Owners' Loan Corporation, one of the affiliated agencies of the Federal Home Loan Bank Board.

Incorporation of Group Health Association

The Code of the District of Columbia, 1929, title 5, chapter 7, section 179, provides—

> Every corporation, joint-stock company, or association not exempt herein, transacting business in the District of Columbia, which collects premiums, dues, or assessments from its members or from holders of its certificates or policies, and which provides for the payment of indemnity on account of sickness or accident, or a benefit in case of death, shall be known as 'Health, accident and life insurance companies or association.'

Group Health Association comes clearly within the category described, for the fact that it pays its members indemnity, not in cash, but in the form of medical and hospital service, is not material. The association, however, was probably deterred from undertaking to operate under this section because it provides that—

> No such company or association shall transact business within the District of Columbia unless it shall have in assets or in capital stock fully paid up in cash, or in both together, not less than twenty-five thousand dollars as a capital or guarantee fund. . . .

Presumably, the association, at the time of its organization, did not have in hand the required $25,000.

True, this section of the District Code, regulating the business of insurance in the District of Columbia, provides—

That nothing contained herein shall apply to any relief association, not conducted for profit, composed solely of officers and enlisted men of the United States Army or Navy, or solely of employees of any other branch of the United States Government service, or solely of employees of any individual, company, firm, or corporation.

But Group Health Association could not take advantage of this, for it is not a 'relief association' but an insurance association, and, moreover, under what purport to be the by-laws of the association, its membership is not to be made up solely of employees of the federal government. Members whose connections with the federal government have terminated are to have the right of continuous membership as long as they pay their dues and assessments. The association is to give no 'relief' within the legal meaning of that term; it is to do nothing more than discharge its legal obligations to its members under its membership agreement.

Only by incorporation, however, could the promoters of Group Health Association avoid personal liability for the debts and torts of the association. Unable to qualify as a corporation carrying on the insurance business, and perhaps unwilling to submit to the supervision and control to which the insurance business is subjected, the organizers of Group Health Association, while still proposing to carry on the insurance business as defined in the District of Columbia Code, sought refuge under a provision of that code that has no relation to insurance. Group Health Association was therefore 'incorporated' under the provisions of the District of Columbia Code, 1929, title 5, chapter 5, authorizing the incorporation of benevolent, charitable, educational, literary, musical, scientific, religious and missionary organizations, including societies formed for mutual improvement or for the promotion of the arts. Nothing in the certificate of incorporation of Group Health Association suggests that it has any educational, literary, musical, scientific, religious or missionary aspirations or is intended for the promotion of the arts. It is difficult to discover any activity named in the certificate of incorporation of Group Health Association that by any possibility brings the organ-

ization within any other of the categories named. The association is not a benevolent or charitable organization; the poorest charwoman or laborer is to pay for the indemnity offered by the association against loss through illness exactly the same dues or premiums that are to be paid by even the most wealthy officials and employees of the Federal Home Loan Bank Board and other government agencies, and nobody is to get anything whatever free under any circumstances. The association cannot successfully claim the right to incorporate as a corporation for 'mutual improvement' within the meaning of the code, for any construction of the provisions of the code that would permit such incorporation would leave the code wide open for all manner of abuse; such provisions then could be used for the organization of morally and financially irresponsible finance, banking, insurance, business and professional corporations of all kinds, each organized for the 'mutual improvement' of its members financially, through the exploitation of some other class or classes in the community, just as Group Health Association is. Such abuses would not be prevented by the fact that banking, insurance and many other forms of business activity and the professions are strictly regulated by law; for the business of insurance and the practice of medicine in which Group Health Association proposes to engage are likewise strictly regulated by law, and if through incorporation as an organization 'for mutual improvement' the association could defeat the laws regulating insurance and the practice of medicine, other persons, differently incorporated, could defeat the laws relating to banking, insurance and other businesses and the laws relating to the professions other than medicine.

Aside from the obstacles in the way of the incorporation of Group Health Association pointed out, there is a further obstacle. An organization cannot be lawfully incorporated to effect unlawful ends, and the certificate of incorporation filed by Group Health Association indicates clearly that one of its purposes is insurance, which cannot be lawfully carried on under the provisions of the code under which the association professes to be incorporated, and its other purpose, the practice of medicine, is unlawful if carried on without a license such as the association does not possess and cannot obtain either in the District of Columbia or in any state in which the association proposes to practice.

That Group Health Association does propose to engage in the insurance business is apparent from an examination of the District code, which provides that every corporation, joint stock company or association not specifically exempted, which collects dues or assessments from its members and which provides for the payment of indemnity on account of sickness or accident, shall be known as a health or accident insurance company or association and shall qualify accordingly. Under its certificate of incorporation, Group Health Association is to collect dues or assessments from its members. In event of their illness or injury, or the illness or injury of any of their dependents, it is to pay indemnity in the form of medical, hospital and other services. The fact that indemnity is paid in the form of services and not in the form of cash does not alter the situation. Without considering any of the legal principles by which this dictum may be supported, it must be clear even to any one that the payment of indemnity in services releases the insured member of the association from what otherwise would be his own obligation to pay in cash for such services and thus releases his own cash for whatever use he desires to make of it. The payment of indemnity in services is therefore the equivalent of cash payment.

That Group Health Association proposes to practice medicine in the District of Columbia, Maryland, Virginia and possibly other states is shown by its certificate of incorporation and by its by-laws. Its certificate of incorporation is a feebly disguised attempt on the part of the organizers to obtain authority for the association, without liability on the part of its members, to treat its members and their dependents, through hired servants and agents of the association, for any and all manner of disease and injury, and its so-called by-laws elaborate on that plan. This certainly constitutes the practice of medicine by the association, notwithstanding the fact that the association is not and cannot be licensed so to practice. The United States District Attorney for the District of Columbia and the Corporation Counsel for the District have both held that a corporation cannot lawfully engage in the District of Columbia in the practice of a profession that requires licensure or registration as a condition precedent to lawful practice, even though the corporation undertakes to practice through licensed or registered agents. If and when Group Health Association begins to practice medicine as proposed in its certificate

of incorporation and its by-laws, the United States District Attorney and the Corporation Counsel for the District, in pursuance of the duties of their respective offices that they have sworn to perform, will be bound to take action to enforce the law.

From what has been said it is to be assumed that the attempt of the organizers of Group Health Association to incorporate is ineffective and that the members of the organization constitute only a voluntary association. If so, the members of the association will have a certain personal liability for its debts and torts, notwithstanding the disclaimer in the certificate of incorporation.

Financial Relations

The certificate filed by Group Health Association in the office of the Recorder of Deeds in the District of Columbia provides that the Association is to have no capital stock and is to render to its members and their dependents the services described therein, 'without profit to the corporation' and without personal liability on the part of its members. The certificate is silent as to the sources from which the association obtained the money necessary for its organization and establishment. It is silent also with respect to the sources from which it is to derive its operating income, except that it refers to members who have paid their 'dues' and to members who have paid their 'dues and assessments, if any.' In the pamphlet containing what purports to be the by-laws of the association, but which contains nothing to show that the members of the association ever adopted them, provision is made for the payment of 'dues' and reference is made to the payment of 'assessments,' but the formula for levying assessments and the limitations on them, if any, do not appear. These supposed by-laws provide, however, that they may be amended by the board of trustees at any time, and, if this attempt to vest in the board of trustees supreme control over the affairs of the association is effective, the board, at any 'regular meeting or at any special meeting when the proposed amendment has been set out in the notice of said meeting,' can amend the by-laws so as specifically to authorize assessments and can even at that same meeting levy on the members of the association any assessment that it deems proper.

The sources of the money necessary to promote the organization of Group Health Association in the first place, to organize it, to provide it with necessary quarters and equipment and to guarantee operating costs long enough to determine whether the association can or can not become self supporting are secrets carefully guarded by the Federal Home Loan Bank Board and Group Health Association. Whether this is because there are private interests behind the association that are unwilling to have their connection with it disclosed, or because disclosure might uncover a precedent that would lead to embarrassing demands on the Federal Home Loan Bank by persons desirous of forming similar organizations in the field of medicine, dentistry, insurance or social work, or simply because disclosure would subject the board and the association to annoying criticism, is not known. One prominent officer of the Federal Home Loan Bank Board, of the Home Owners' Loan Corporation, and of the Federal Savings and Loan Insurance Corporation, who is a member of Group Health Association and has given it his particular blessing, is listed also as one of the trustees of the Twentieth Century Fund, Inc., of which Edward A. Filene of Boston is listed as president and trustee; but perhaps this has no significance.

Under what law does the Federal Home Loan Bank Board or any of its affiliated agencies finance by government loans private organizations such as Group Health Association? Even if there were such authority, good judgment would hardly justify the making of such loans in the entire absence of any likelihood of repayment. There would seem to be no likelihood of the repayment by Group Health Association of any loan made to it under its present setup. The dues of members of the association are so low that it is hardly likely that it will ever be able to pay even operating expenses provided, of course, it undertakes to furnish its members and their dependents with really first class medical and hospital service. As far as any available record shows, provision has not been made by the association for the amortization of the initial costs of plant and equipment.

Possibly the contract between the Federal Home Loan Bank Board and Group Health Association, made apparently without advertisement or competitive bidding and carefully concealed from the public, may provide for pay-

ments to the association by the board so greatly in excess of the cost of the service that the association is to render as to enable the association to repay such advances as have been made by private interests, to pay for necessary quarters and equipment, and to protect the association against loss from medical and hospital services rendered officers and employees of the board and its affiliated agencies, and the dependents of such officers and employees. In any event, it has been admitted that the Home Owners' Loan Corporation has already appropriated an initial sum to enable Group Health Association to render services of some kind, to somebody, somewhere, and according to newspaper reports the Federal Home Loan Bank Board has guaranteed an advance up to $100,000 to get the association under way.

Dues and Assessments

Under the by-laws of the association, 'family membership' is available for 'married or single members with dependents,' at a cost of $39.60 per annum payable in equal monthly instalments. No limit is placed on the number of dependents on whom a 'family member' can confer all benefits of the association under this class of membership. 'Individual membership' available for 'married or single members having no declared dependents' is now priced at $26.40 a year, payable monthly. The amount of the dues can be changed at any time by the board of trustees. A 'dependent' is defined as a person 'totally dependent upon the member of the corporation for a livelihood at the time of such person's disability and before need of medical service.'

Check-off on Government Payroll

The form of application for membership provided by Group Health Association offers the member the option of paying his dues personally or of assigning to the association so much of his government salary as may be necessary for that purpose and requesting his 'employer,' the government of the United States, to deduct semimonthly the amount assigned and remit it to Group Health Association, Inc. As this assignment form is also an application for membership and obviously belongs to the files of the association, an additional assignment form has been provided, presumably to be filed with the paymaster of the Federal Home Loan Bank Board or the particular affiliate of the board by which the member of the association is employed.

This form specifically assigns, sets over and directs the Home Owners' Loan Corporation and the Federal Savings and Loan Insurance Corporation to pay Group Health Association the amount due to that association, out of any salary or wages due or to become due to the member so long as membership continues. This establishes the check-off scheme sometimes employed to hinder defections from the ranks of organizations that fear difficulty in maintaining membership and to impose on the employer the burden that properly belongs to the organization of providing a collection agency. Under the check-off system, a member who finds membership no longer advantageous cannot quietly and without explanation cause his membership to be terminated by the simple expedient of omitting payment of dues. He must take affirmative action and resign from the organization, with danger of loss of social standing among his fellows, and he must notify his employer that his membership has been terminated, with the possible loss of esteem by his superior officers if the organization happens to be a pet scheme that they are promoting.

It is well established, however, that the assignment of government salaries is contrary to public policy. The assignment of any claim against the United States that has not yet been earned is forbidden by statute, and even after a claim has matured it can be legally assigned, if it can be assigned at all, only by conforming with the conditions laid down by statute, and the provisions of this statute have been held to apply to government salaries. So positive are the express and implied inhibitions against the assignment of federal salaries that, when it was deemed desirable that employees of the Department of Agriculture and of the Department of Commerce be permitted to assign their salaries, it was deemed necessary first to procure authority by act of Congress, and even then the authority granted for assignments by employees of the Department of Commerce was expressly limited to assignments made while absent from Washington and employed in the field.

The check-off scheme planned by Group Health Association, with the apparent approval of the Federal Home Loan Bank Board and its affiliates, gives the premiums or dues that are payable to the association priority over every other claim, moral or legal, against the salary of every member of the association. The association does not undertake to indemnify its members in cash, which would help the mem-

ber to provide himself and his dependents, in time of sickness and in time of health, with the necessaries of life, including medical service, but to indemnify him only in medical and hospital services, and then only to the extent that the board of trustees of the association and its medical staff deem feasible in view of the resources of the association at the moment and of the condition and location of the patient. Dues or premiums under the check-off system must be paid. The insured may use only the remainder of his salary for such supplementary medical service as the association does not provide and for food, clothing, shelter and drugs and other medical and surgical supplies necessary for himself and his dependents. The hired physician of the association is to be assured his wages through the check-off system, even though food, medical and surgical supplies, and sometimes essential service, such as the use of radium and high voltage roentgen therapy, may have to be omitted because of the inability of the employee to provide them. This is in marked contrast with ordinary medical practice, in which the essentials of life and treatment for the patient and his dependents are obtained first, while the physician waits for his fee—and does so gladly when the circumstances of the patient so indicate.

If Group Health Association succeeds in establishing the check-off system as a proper and lawful way of insuring the payment of the present and prospective debts of government employees, it will undoubtedly prove a boon to labor unions, finance corporations, merchants who do business on the installment plan, landlords and others, who under the law cannot attach or garnishee the salary of an employee of the federal government but who will be able to protect themselves in advance by demanding assignments of federal salaries as securities for debts. If Group Health Association is going to have the check-off system adopted by the federal government for its benefit, there is no reason why any and every other person, whether individual or corporate, may not claim the same privilege.

Membership

The original certificate filed by Group Health Association in the office of the Recorder of Deeds of the District of Columbia makes eligible for membership all "employees of any branch of the United States Government Service

other than officers and enlisted men of the United States Army and Navy.' It makes no discrimination on account of race or color. Such employees number 840,159 and are scattered throughout the entire civilized world. These employees and their dependents would probably number 2,500,000 and provide a rather extensive field of medical practice for Group Health Association. The organizers of the association, however, in what they call its by-laws, seek to handicap the civil employees of the federal government who are not employees of the Federal Home Loan Bank Board and its affiliated agencies, by providing that "in case persons other than employees of the Federal Home Loan Bank Board and agencies under its direction shall be designated as eligible for membership, such action shall first have approval of a majority of the board of trustees and a majority of the members of the corporation present in person or by proxy at a regular or special meeting."

But this restriction, like all others contained in the by-laws, is of little moment; the board of trustees can remove or modify it in any way it sees fit, at any time.

Membership will be restricted geographically by the by-laws by which members and their dependents, to be entitled to avail themselves of the medical services to be performed by the association, must be located in the District of Columbia or within ten miles of its boundaries or must come to the city of Washington for advice and treatment, although the medical director may provide for house calls, at points not exceeding twenty miles distant. The potential membership of the association, however, even as thus geographically restricted, will be considerably more than 115,912. To determine the total load to be carried, the dependents of members must be added to the foregoing numbers, possibly an average of two dependents for each member.

These figures show only the potential membership and load of Group Health Association. What the actual membership and load will be, no one can foretell. If, as has been alleged, there is an undue prevalence of illness among employees of the Federal Home Loan Bank Board or of some of its affiliated agencies, a fair number of the employees who are physically inferior may be expected to join the association.

Employees, too, who now are deterred from claiming sick leave because of the expense of employing a physician to

vouch for the sickness and to furnish the necessary certificate may join the association because it furnishes an easy way to obtain such certificates practically gratis. Illness among the dependents of employees, particularly among those with large families, will tend to swell the membership rolls.

As affecting the size of the membership, the standards that Group Health Association adopts in determining who may and who may not be a member will be a determining factor. If persons suffering from all manner of chronic diseases and infirmities are readily accepted for membership, employees may postpone applying for membership until they or one or more of their dependents are manifestly in ill health. Only experience can determine the probable number of members of Group Health Association and of their dependents.

The physicians employed by Group Health Association are primarily the servants and agents of the association. The records made by them as servants and agents of the association belong to the association. Their primary duty is to the association, not to the patient. They must abide by the terms of their contracts of employment, and those contracts presumably require conformity and compliance with the by-laws and rules of the association. The by-laws and rules of the association expressly provide that—

> The Medical Director shall render such reports as the Board of Trustees shall require.

Obviously, under this provision of the by-laws, the board of trustees, which includes two representatives of the Federal Home Loan Bank Board, can call for any disclosure whatever concerning the activities of the medical director and physicians and nurses working under his direction, and use, free from any obligation to secrecy, the information thus obtained.

A member of Group Health Association, as one of the conditions of membership, see[illegible] to waive, in favor of the association, his right to professional secrecy on the part of any physician-employee of the association who attends him, and impliedly his dependents, in accepting the services of such physician-employee, likewise waive their right to secrecy.

Area to be Served

If it is difficult to determine the future membership of Group Health Association, it is not so difficult to determine the extent of the area over which it plans to extend even its initial activities. The certificate of incorporation contemplates apparently world-wide service. The by-laws, however, propose to limit the area covered by providing that 'To be able to avail themselves of medical and surgical service, the members or dependents must be located in, or within ten miles of the District of Columbia line, or must come to the City of Washington, D. C., except that the Medical Director may provide for house calls not exceeding twenty miles.'

This area covers the entire District and considerable areas in Maryland and Virginia and is bisected by the Potomac River.

The District of Columbia alone covers somewhat more than sixty square miles. An area including the District of Columbia and the territory within ten miles of its boundaries comprises approximately 750 square miles. The territory including the District of Columbia and the region within twenty miles of its boundaries covers approximately 1,950 square miles. It is obvious that to serve even the normal area, covering the District of Columbia and the territory within ten miles of its boundaries, about 750 square miles, will call for the establishment of clinical centers at various points and for liberal provisions for transportation of physicians and nurses and ambulance service. This is based on the announced plan of the association of operating through salaried full-time physicians and not through local physicians paid on a fee basis. The increased difficulties of the situation if a serious effort is to be made to cover the District of Columbia and an area within twenty miles of its boundaries is apparent.

Benefits or Indemnity Offered

Group Health Association proposes to provide its members and their dependents with medical and hospital service. This is to be done through a salaried full-time medical staff, supplemented by a few part-time specialists, through contracts with hospitals, and through nurses when circumstances so require. The medical staff is normally to make home and hospital visits over an area of about 750 square

miles and, at the discretion of the medical director, over an area of 1,950 square miles. Patients are to be encouraged, however, to present themselves at a central clinic for treatment. In such an ambitious, untried, project it is not surprising that the board of trustees should have reserved the right to itself and to its medical staff to limit the service rendered whenever either the board or the medical staff sees fit. The association has been careful not to obligate itself to furnish service of any definite kind or quantity. The so-called by-laws of the association expressly provide that—

Section 4. The corporation will not assume responsibility for furnishing unlimited medical service to members but will do so only to the extent of its resources.

Section 5. The Trustees shall have the right to determine and modify the extent of the service to be furnished to members at any time they may decide to do so upon written notice to the members to that effect given fifteen (15) days prior to any such change.

To one familiar with the city of Washington and its environs, the question necessarily arises as to how Group Health Association has solved or proposes to solve the question of service to Negroes employed by the government. Certainly government officers and employees and their dependents cannot be denied membership in the Government-financed Group Health Association simply because they are Negroes. The solution will be watched with interest.

Before considering the service or indemnity that Group Health Association promises its members and their dependents—always subject to the will of the board of trustees and its medical staff—it will be well to consider definitely what it will not do or will do only conditionally. The association will not treat members who suffer from industrial accidents, nor will it perform any surgery on the brain or nervous system. It will not treat venereal diseases, except at the personal expense of the patient, at the rate of 50 cents per treatment. The association will not treat a member or any of his dependents if the medical director has recommended confinement to an institution for mental or tuberculous disease or drug or alcohol addiction. It will not provide its members with (1) dental treatment; (2) medicines; (3) surgical appliances, orthopedic devices,

crutches, or artificial limbs; (4) eyeglasses or eyes (sic); (5) hearing devices; (6) radium or high voltage roentgen treatment; (7) oxygen tanks and tents and materials; (8) blood transfusions; (9) special nursing service, unless ordered by the medical director; (10) treatment, services, supplies, and items of any kind prescribed or ordered by a physician not in the service of the association, or (11) any expense of hospitalization in excess of that allowed by the association. The association will, however, endeavor to procure such merchandise and services for members and their dependents at reduced rates. Additional limitations on any and all services and merchandise furnished by the association may be imposed by the board of trustees at any time on fifteen days' notice, and in any individual case the medical director or his representative is authorized to determine and prescribe the extent of the medical service to be rendered.

Subject to all the limitations and qualifications stated, and such further limitations and qualifications as the board of trustees and the medical director and his representatives may impose, the association offers its members and their dependents in return for the fees paid—

Medical and surgical examination and treatments, including examinations in special departments, such as refractions of eyes, laboratory test, x-ray examinations, surgical operations, confinement cases and professional consultations, nursing and ambulance facilities, house calls, and hospitalization in a semi-private room (2 bed room) limited to a period not to exceed 21 days for any one illness. However, members desiring to occupy a private room may do so, in which case the corporation will contribute the sum of $4.00 per day toward the expense of such room for such period. In all hospital cases, the corporation will pay for semi-private room (2 bed room) service only, except in the case of infectious or contagious diseases, in which cases a maximum of $4.00 per day will be paid for said period, not exceeding 21 days.

As far as can be learned from the certificate filed by Group Health Association and from its by-laws, no member of the association and no dependent of a member is to have any freedom of choice of his physician. Obviously, this must be so, for with a limited, salaried, full-time medical staff, operating over an area of 750 square miles or more, it

would be impossible for each staff member to cover the entire area daily, to satisfy the desires of members scattered over the entire area. It is understood that the association will not object to a member or a dependent of a member being treated at his own expense by a physician not in the service of the association. As the members of the salaried staff of the association are likely to be looked on by the profession generally in the community as on the outer verge of ethical practice, if not altogether beyond the pale, it is not clear how they are to obtain qualified consultants or procure hospital service for their patients.

Announcement has not been made at the present writing of the medical staff, beyond the appointment of Henry R. Brown, M. D., formerly of the Veterans' Administration, as medical director. Announcement has not been made of the hospitals in which the association proposes to provide accomodations for its members and their dependents. Quarters for a clinic or laboratory have been rented in the business district of Washington but are not yet equipped. The date originally proposed for inaugurating active medical and hospital service, September 1, has been set ahead indefinitely.

Conclusions

There is no reason to believe that Group Health Association, even if it could lawfully engage in the insurance business and the practice of medicine as it proposes to do, could materially reduce the absence rate among officers and employees of the Home Owners' Loan Corporation or its related agencies. Absences on account of illness might even be increased, for a medical certificate would cost nothing. A physician cannot always deny that a man has a disabling headache, or a woman a disabling menstrual period.

Since there is no evidence to show that government employees are unable to pay for medical services, there is no reason to believe that the cheapening of medical service will make him more likely to seek medical aid. There is no reason to believe that the character of medical service under the Group Health Association plan can be kept at the same average level of quality as that prevailing in private practice. Especially would quality be likely to fail in times of epidemics and of any unusual prevalence of disease, when the limited medical staff of the association

would be overworked and could find no relief. In any event, medical service under the association would be likely to be handicapped by difficulty likely to be experienced in obtaining the best consultant service and hospital accommodations. Physicians who sell their services to an organization like Group Health Association for resale to patients are certain to lose professional status.

The probable results on the medical profession of the successful operation in the District of Columbia and vicinity even of a single organization such as Group Health Association cannot be estimated.

Out of a total population of 486,869 in the District of Columbia, 115,912 are civil employees of the United States government, and, of these, 2,517 are employees of the Federal Home Loan Bank Board and its affiliated agencies. If to these persons, all of whom are eligible for membership in Group Health Association, their dependents are added, allowing an average of two dependents for each employee, a total of 347,736 persons is reached, out of a total population of 486,869 that the promoters of Group Health Association, according to their certificate of incorporation, seek to withdraw from the ordinary practice of medicine and to cover into a group health insurance contract practice system and treat through physicians hired for that purpose. The effect of the withdrawal from private practice of even one-half that number of persons, all of whom are able to pay for medical services, will materially disturb medical practice in the District of Columbia and react against public interest.

Under the scheme proposed by Group Health Association, far greater benefits will accrue to the richer and more liberally paid employees of the Federal Home Loan Bank Board and its affiliates and of such other government agencies as may identify themselves with the scheme than to employees of more meager resources. The scheme is so planned that the richer and more liberally paid employees are to obtain medical service at rates based on the incomes of the poorest employees. The courts have repeatedly held that the value of medical services rendered to a patient may be properly appraised in relation to his wealth, just as the value of legal services are commonly appraised in relation to the value of the interests that the lawyer is called on to protect, whether interests involving the life of his client or his client's property. Under the present scheme,

fees that are charged for medical services to the richer and more liberally paid employees are to be identical with those charged employees of the lowest grade, doing part-time work. The richer and more highly paid and influential employees are therefore to gain the most financially, by this scheme. Nothing in the certificate of incorporation or by-laws assures to those lower in the ranks that they will receive the same quantity and class of medical service as that provided for their superiors."

Gov. Ex. 108 is a letter from defendant Conklin, Secretary of the Medical Society of the District of Columbia to the defendant Fishbein, Editor of the Journal of the AMA, dated October 7, 1937:

"DEAR DOCTOR FISHBEIN:

The Medical Society of the District of Columbia desires 1,000 reprints of the article which appears in the October 2, 1937, issue of the Journal, Organization Section, p. 39B-46B, entitled 'Group Health Association, Incorporated,' for distribution to its members. We should appreciate your informing us of the cost and of the earliest probable time for delivery.

Thanking you, I am,

Very truly yours, C. B. Conklin, M. D., Secretary."

On the exhibit is the pencil notation, as follows:

"We have less than 50. Bureau Medical Economics can give 50."

Gov. Ex. 109 is a carbon copy of a letter from Olin West, Secretary and General Manager of the AMA, to C. B. Conklin, dated October 19, 1937:

"DEAR DOCTOR CONKLIN:

We shall send you at once printed copies of the article that appeared in the Journal of October 2, entitled 'Group Health Association, Incorporated.'

I am not definitely sure that we can send as many as 1,000 copies but if they are available the full number will go forward as soon as possible and any deficiencies will be made up later.

Very sincerely yours, Olin West."

Gov. Ex. 37 was read from to the jury, as follows:

Minutes of Business Meeting of the Medical Society of the District of Columbia, of October 6, 1937. (Excerpt)

Dr. William M. Sprigg, Chairman of the Executive Committee, was recognized. He made a motion to the effect that in view of the nature of the business to be considered that the Society go into executive session. Duly seconded and adopted.

The Chair requested any non-members present to retire from the room, and appointed Dr. F. C. Fishback as sergeant-at-arms.

Dr. Sprigg, continuing, stated that for the information of the membership he would report that the Executive Committee met 4 times during the summer for the purpose of studying questions of the organization which has been featured by the Home Owners' Loan Corporation. He pointed — that officials of the American Medical Association lent their aid — Dr. W. C. Woodward, Director of the Bureau of Legal Medicine and Legislation and Dr. R. G. Leland, Director of the Bureau of Medical Economics, discussed the matter before the subcommittee; and Dr. Olin West, Secretary, discussed the matter with certain members of the Society. All discussing this question were thoroughly opposed to the plan as presented in toto. Subcommittees were appointed to study the question and the following resolutions are the result of these deliberations, concerning Group Health Association, Inc.

Resolved, That a final expression of the attitude of the Medical Society toward the acceptability of any cooperative medical service organization as an approved agency for the employment of members is manifestly impossible without the submission of all related data as a basis of approval, and manifestly undesirable when information is lacking as to whether any such group will ever become operative; and

Resolved, That the membership be reminded of the requirements of Chapter IX, Article III, Section 2 of the Constitution for their guidance with respect to Group Health Association, Inc., of the Home Owners' Loan Corporation; and

Resolved, That the Medical Society recognizes a growing desire in Washington for some feasible plan of cooperative group medical service on a prepayment basis; that it recog-

nizes the value of such an arrangement for many people of limited incomes; and that, having already provided a means in the Health Security Administration, for the people without ready money to secure medical service on a post-payment plan, it is willing to collaborate with appropriate, responsible groups to devise methods for group prepaid medical service mutually acceptable to the two essential parties to such an agreement, viz.: The group needing and proposing to pay for the service and the group capable of furnishing it; and

RESOLVED, That, if hereafter it shall appear necessary or desirable, the Board of Medical Supervisors of the District of Columbia be requested to determine, by judicial decision if necessary, whether the operation of Group Health Association, Inc., or any similar organization, is or will be in conformity with the Healing Arts Practice Act for the District of Columbia; and

RESOLVED, That the attention of the membership be directed to a critical analysis of Group Health Association, Inc., prepared by the Bureau of Legal Medicine and Legislation of the American Medical Association, to appear in the Journal of the American Medical Association for October 2, 1937; and that the membership be admonished to read the entire article for their information and guidance.

Upon motion, duly seconded and adopted, the recommendations of the Executive Committee were considered seriatim.

Dr. Thomas A. Groover was recognized. He stated that if there was no objection he would like to introduce a substitute for the foregoing resolutions. No objections were made. He presented the following:

Whereas, The Bureau of Legal Medicine and Legislation of the American Medical Association has prepared and published a comprehensive report on the activities of Group Health Association, Incorporated; and

Whereas, The Medical Society of the District of Columbia is in full accord with the content of said report, both as to the established facts set forth therein and the implications drawn therefrom; therefore, be it

Resolved, That the Medical Society of the District of Columbia cause a copy of said report to be sent to each of its members as an indication of its future policies with respect to combatting the activities of said Group Health

Association and also with respect to the ethical responsibilities of the Medical Society of the District of Columbia and of its individual members.

Dr. Groover moved the adoption of these substitute resolutions. Seconded by Dr. F. X. McGovern.

In discussion of the subject, Dr. Groover stated he wished to briefly state some of his reasons for proposing these substitute resolutions. He said:

'I wish briefly to state some of my reasons for proposing these substitute resolutions.

I have grave doubts if this Medical Society alone can do a great deal toward combatting Group Health Association, Incorporated, and believe that the most effective assistance and support it can invoke is that of the American Medical Association.

The A. M. A. has manifested a keen interest in this problem and in the October 2nd issue of the Journal has caused to be published a comprehensive survey of it which I trust many of you have read carefully.

If you have, you must have noted that there are three dominant notes that run through it—the first being that Group Health Association is illegal; the second, that Group Health Association is unethical; and third, that the operation of Group Health Association would be inimical to the best interests of the medical profession and the public.

As to the illegality of Group Health Association, I am not personally qualified to speak, but I happen to know that the A. M. A. has made a careful study of this aspect of the question and it is their opinion that it is illegal. It would seem out of place at this time for this Society to commit itself to any plan of procedure such as that recommended by the Executive Committee in the event that legal action against Group Health Association is undertaken later. Obviously any plan of procedure should be contingent upon the advice of counsel.

As to the ethical responsibilities of the Medical Society of the District of Columbia and its members the conclusion to be drawn from the A. M. A. report is inescapable. It says: "physicians who sell their services to an organization like Group Health Association for resale to patients are certain to lose professional status." In contrast to this clear-cut statement the statements in the Executive Committee report are equivocal and quibbling for which

I can find no justifiable excuse. The members of this Society I believe have a right to expect a definite unevasive expression from the Society as to their ethical responsibilities which is lacking in the Executive Committee report.

Finally it is the collective opinion of organized medicine that prepayment plans for medical care except under very special conditions are inimical to the best interests of the medical profession and the public. The quasi endorsement of any prepayment plan for a community like Washington as contained in the Executive Committee report might well alienate the support of the A. M. A. and prove disastrous to its influence and leadership. For these and other reasons which I will not go into I believe that any such commitment by this Society might very well prove to be exceedingly embarrassing.'

Dr. Sprigg was recognized. He stated that he personally was very glad Dr. Groover brought in this report. He added that Dr. Groover was on the subcommittee to study this subject. He pointed out that the report from the American Medical Association did not come to the attention of the committee until the last meeting of the Executive Committee. 'Dr. Groover has studied this report very carefully and has brought in such a resolution as that committee ought to have brought in in the beginning. I thank him for it and heartily endorse him.'

. . . . . .

Dr. Groover's motion to the effect that the substitute resolutions be adopted (motion was duly seconded by Dr. McGovern) was finally adopted.

Dr. Sprigg made a further motion to the effect that a copy of Dr. Groover's report be enclosed, as a report from the Executive Committee, with the copy of the statement prepared and published by the American Medical Association, which is to be sent to every member of the Society. Seconded and adopted."

Mr. Leahy I would like to have read page 4, because that precedes the adoption of the resolution.

Mr. Kelleher: All right.

Mr. Leahy: That includes Horvath's prepared statement.

Mr. Lewin: We want that page too.

Mr. Leahy: All right.

Mr. Kelleher: This portion that I now read precedes the adoption of the resolution to which I referred.

"Dr. A. B. Bennett said that he personally did not believe that any resolutions from this Society would have any effect on Group Health Association, Inc. Furthermore, he did not believe the report of the American Medical Association would have any effect on Group Health Association. It was a corporate body under the law no matter how evasive it may have been. As he saw it there was only one hand that could close the door of that group—the court. Personally he would like to see the Society proceed to get that one hand and go to the court. 'If we can go before a court and get the best lawyer and prove it is illegal, that the charter was obtained under the wrong part of the laws, and the court sees it our way, it will be declared illegal and closed up. If the court does not see our way then, and without provision of insurance, we would proceed on the same line and beat them out at their own game.' In continuing, Dr. Bennett stated that there was in attendance an Active Member of this Society, an American citizen, born in this country, sent to Europe, locating in Austria, Hungary where he practiced medicine from 1915 to 1931. He made a motion that Dr. Horvath be given the privilege of the floor to read what he prepared concerning this subject. Seconded and adopted."

Mr. Lewin: Do you want this in as Horvath's?
Mr. Leahy: Yes.
Mr. Lewin: All right. Go to it.

Dr. Frank S. Horvath read a prepared statement (copy appended). He suggested that the Society set up a group health type medical service in cooperation with the American Medical Association. He outlined briefly a plan which would serve those with an income of $3,000 or less; not including those in the Army, Navy, or Public Health Service. Membership dues would be paid, possibly $30 to $45 per annum. He made a motion that this problem and proposition be sent to the Executive Committee for study and some plan be formulated and accepted by a special committee and brought to the floor as soon as possible; further, that this program, if worked out, be communicated to the American Medical Association for early consideration with a sugges-

tion that it be adopted and introduced all over the country under the direction of the home office. No second to this motion."

. . . . . .

Now, do you want Hooe's statement?

Mr. Leahy: No, read the Horvath statement.

Mr. Lewin: It is attached to the minutes. You will have to take it out of the original—I have it (examining papers). I have it in my book. I will take over.

. . . . . .

"Statement Prepared by Dr. Frank S. Horvath, Presented Before the Society on the Evening of October 6, 1937

As a member of this Society I take liberty to express my reaction to this problem. I think my reaction, my opinion, and my suggestions may have some value to you as I have some personal experience in this matter and I shall be very sincere in telling you about it.

I happened to practice medicine abroad in Austria, Hungary, from 1915 to 1931, just in that historical period when the old mode of practicing medicine, based upon the high ethical principles of Hippocrates, slowly but gradually and radically changed to socialized medicine or as they call it to—compulsory state health and sick benefit insurance.

I wish to discuss not only the changes brought on by private organizations and institutions and later on a big scale by the state itself, but I'd like to talk about the reactions and policies and failures of organized medicine over there.

My purpose with this description is not only to tell you a story, to show you a piece of medical history which many of you know, but to give you a historical background with its lessons to awake your conscience and responsibility in the last hour, when we still may not before long decide upon our professional future and the future of the fundamentals of practicing medicine. Until it is not too late keeping in mind what mistakes and failures followed the policies of our colleagues abroad when they by poor organization, hesitation and selfishness dropped and lost the initiative in moulding and building their professional future by failing to make the inevitable change in the mode of practicing medicine. This failure, as you all know, resulted in the regimentation of medicine with the almost complete annihilation of the high ethical principles we all cherish.

This change, however, did not come so suddenly as it may look in the first moment. It started in the 80's when the growing industrialization of Hungary produced the organizations of workers and white collar men as well. One of their chief aims was to *secure* for the health and sick benefit of their members. They organized their health insurance institutions themselves. A certain per cent of their wages was paid into the treasury of the organization. They organized hospitals, clinics, hired physicians, etc. The money was, however, not used exclusively for the good of the insured but for rewarding good party members mainly, as the physicians and clerks belonged almost all of them to the socialist labor party. Remember this well! These institutions were organized by laymen partizans and the institutions born out of politics never could serve the purpose well. The underpaid doctors, in the dispensaries and hospitals, gave a second rate service, overloaded with bureaucratic matters. The insured got a second rate service only, though it was a definite progress for the masses in comparison with what they had before.

The growing industrialization of the country raised the class struggle so high that many private concerns like banks, factories, life insurance companies, etc., felt they had to do something to ameliorate the antagonism between labor and capital. Instead of raising the wages they decided to show their good will by organizing infirmaries, hospitals, and medical care to their employees of course by or with the money derived from deductions of the employees' wages.

How did organized medicine react to these practices? The number of physicians at that time was relatively small and the practice of medicine quite prosperous. It is no wonder that they did not pay any special attention to these movements. They simply scorned and looked upon their colleagues, engaged in the insurance groups, as second-rate doctors as they did not care to get the masses in the lower brackets. But when the different private concerns started out with health insurance they realized that this will infringe upon their practices considerably they commenced to discuss the problem in the medical societies here and there, emphasizing the importance of the preservation of free medical practice. However, they were not professional minded enough.

Many of the leaders, very clever in the intricacies of compromising and through their good connections always found

an expedient to get and accept a good job in the insurance institutions so far 3-4 at one time.

In the meantime time marched on and many other groups widened the scope of the health insurance activities. In 20 to 30 years the Union of teachers, the Army, the Police corps, the Municipal Employees of Budapest, and many others organized their own clinics, hospitals and medical staffs and remember well none of them was organized and run by medical men but mainly by lawyers or politicians, with the result that there were more clerks and bureaucrats than necessary, political proteges mainly. The money was spent mainly on these proteges and the doctors got poor pay, were overloaded with bureaucratic matters and in the selection of physicians not the right of the best but pull prevailed.

The Medical Association could not do anything as many of the leaders were personally involved, who did not want to curtail rights, acquired 10 to 15 years before, and though they saw the downfall of the old ethical way of practicing medicine they did not do anything about it, they could not turn the tide, they lost their chance as other very serious things happened.

The government, composed of loud politicians of the post-war and post-revolutionary period, to break the unrest after the war and to satisfy the masses, who wanted it, inaugurated compulsory health and sick benefit insurance without asking the medical men and in spite of the protest of organized medicine, though this protest still was weak and not sincere. On the other hand there were a great many young physicians and who were willing to accept jobs for any pay just to escape starvation.

So the state medicine came; instigated, inaugurated and run by politicians against the weak and not sincere protest of disorganized medical profession, which did not have a good far-seeing policy to prevent this and break the tide in fiery social struggles handicapped with a large number of half starving young physicians in the bag who desired to find a place under the sun.

Just a few facts:

(a) About 13 per cent of the inflowing huge money was paid to the medical men.

(b) Twenty-six (26) per cent for medicine and hospitalization.

(c) The rest was all devoured by the administration.

(d) Malingering with sick benefit caused many a headache to the government and dragged the institution into bankruptcy.

(e) The patients were served poorly as the doctors were underpaid, and overloaded with patients and with bureaucratic matters so much that they hardly could write down the name and diagnosis of the patient and there was scarcely any time left for examination or treatment. And in spite of the fact that the masses in general got more medical care than before the compulsory state medicine era, nobody was satisfied; the patients expected more for their money, they felt that they got mass service only and no individual care; on the other hand the regimented doctors lost their initiative and self-reliance, were underpaid, felt humiliated and were regarded second-rate clerks only in the Big Mill where the bureaucrats and politicians were the masters and bosses. And nevertheless for positions with a monthly salary of $25 to $30 there were once 1,400 applicants for 40 openings.

To give you a fairly complete picture may I say this:

(a) About 80 per cent of the population belongs to the socialized medicine services.

(b) Ten (10) per cent of the remaining 20 per cent is broke and so there is about 10 per cent of the entire population only left for private practice.

Members of the organized medicine who opposed state medicine had to give in and were very anxious to get some position in the state medicine organization which was instigated, organized and run without them, against them and against the priciples they had followed and cherished for centuries because they failed to recognize the danger in time and failed to organize, because they lost the initiative to change the old way of practicing medicine, to produce and offer themselves new schemes to the public and thus to keep the helm for themselves while it was not too late.

Now let us leave this gloomy but true picture and have another retrospection (historical) in the history of medicine in general. From the dawn of medicine its practice always rested upon the high ethics laid down by Hippocrates.

The basic principles were:

(a) The patient's confidence in his physician.

(b) The patient's right to select his physician.

(c) The intimate relation between the two which enabled the physician to do the most good for the sick must be preserved for the sake of mankind and no third somebody or something must infringe upon it to interfere with initiative and self-reliance of the physician. This principle is the salient point of our fight and it must be preserved no matter by what means or what political maneuvers.

Accepting this as our chief aim let us study the aforementioned relation of patient and physician. We must first of all emphatically state that there are three important factors in this relation:

1. The patient.

2. The doctor.

3. The Economic Factor of Fee Paid for the Medical Services.

The economic status or financial capacity of the patient is a changeable one and if the change is great and involves many patients it may and will change the old scheme of practicing medicine and if we do not look out it may change and ruin that fundamental relation also. I think it is very logical that if necessary we must and shall change the old way—classical mode of practicing medicine, if we want and must save the basic principles!

We must recognize that the pauperization and the intelligence level of our people is higher than ever before, their social demands more conscious and louder and strongly influenced by shrewd politicians. The advance and specialization of medicine calls for more tests and more refined treatments and many of the patients can not fully pay for the services rendered and many of them who could pay would prefer to pay less; such is human nature!

Politicians seem to know and handle their subjects better and are very keen and alert to take advantage on their weaknesses. Certainly they possess more means to influence the public than organized medicine has to save the old ethical way of practicing medicine.

And if the majority of the patients as voting citizens of the states will decide that they want socialized medicine what can we do about it? I am sure that we all agree that we must prevent this, we must assume different tactics and we must make a change ourselves.

To justify this stand we have to recall and study what changes had been attempted up until now by different sources and what were our reactions to them.

What we have done is very similar to that what happened over there. Meetings, committees, investigations, comprehensive and comparative studies one after the other all ended up with a protest against any change involving the present mode of practicing medicine thinking that the change of form will ruin the salient principles.

We shall be very much mistaken if we believe that the mere protest and emphasis on the ethical principles will save them and will block or prevent a change. We may protest and lose the initiative and helm in making a new form of practice of medicine and finally the major part of organized medicine will have to give in and join and serve a scheme which will or may be made without us or against us.

What organized medicine is concerned the American Medical Association; it took the stand of observation and so far has not proposed or offered a change, expecting a sound change to be evolved by some state or local societies. The Medical Society of the District of Columbia inaugurated maybe one of the noblest and sincerest experiments to tackle this growing problem. I refer to the Central Admitting Bureau and the Medical-Dental Service Bureau for the medical care of people with restricted means. The intentions in planning these institutions were very noble indeed and highly ethical, but seemingly they have no appeal to the masses maybe by lack of publicity or lack in advertising it widely enough. By this scheme we shall have just exceptional cases and not the masses who undoubtedly are seeking and are offered to get medical care in some form of insurance for themselves and their families. If we do not take and get the masses and their continuously inflowing money; laymen or the state are going to do it without us, and probably against us and pay us only crumbs from the lost bread (loaf).

We do not like and object if physicians outside of our ranks make or try new forms, we despise if laymen do it and we think with abhorrence on socialized medicine installed by the state or politicians as we know that it will be not for the good of the sick as it will kill the ethical fundamentals of practicing medicine.

Mr. President, we know all about that new scheme which is in the making under the name of Group Health insur-

ance of the Home Owners' Loan Corporation, which is, maybe, the last warning to us to be wise and to be our masters ourselves.

Why shall we wait that someone else without our ranks shall make it for us or more probably against our will, against our taste and against our interest? Why not make it ourselves? Are we not as good social planners and businessmen as laymen or politicians?

We must realize that no matter what extreme social system may replace the present one, the free practice of medicine of today always will remain to — certain extent as it exists in countries where extreme socialization is general as there will be always people who will get money to pay the doctor whom they have confidence in.

On the other hand we know that our chief aim and I may say duty must be to save the cherished principles of our profession and nobody else is going to do it for us. It is a very important issue of professional policy that we must change our tactics and we shall make a change in the way of practicing medicine to accommodate it to the present and continuously growing trend of social changes. Every one of us must know that we make these changes to save the fundamental ethical principles and not to give them up. Every one should know that this will be a political maneuver or a temporary show, if you want to put it up this way.

Mr. President, the responsibility in this very important matter which every member should feel wholeheartedly makes me to raise my voice in the last hour to suggest and propose that we ourselves shall organize, set up and run a group health insurance type medical service through the Medical Society and in strict collaboration with the American Medical Association. I cannot submit an elaborate plan and I will not argue about details in this hour but I should like to put down the principles and some facts for consideration:

1. The Group Health Insurance of Organized Medicine would provide for medical services to its members. Everybody may be eligible for membership, except the enlisted men of the United States Army and Navy, and employees with an annual income of $3,000.00 or above. No discrimination be made on account of race or color.

2. Membership dues be $35.00 to $45.00 yearly. Special family membership dues be regulated according to the number of dependents.

3. Medical services may be combined with Group Hospitalization, maybe in conjunction with some insurance companies who offer 21 days of hospitalization for 75 cents a month as you all know of.

4. No sick benefits of any kind to be contemplated at any time.

5. The medical staff will consist of the members of the Medical Society of the District of Columbia. Any member may join the staff voluntarily by paying $50.00 to $100.00 of initiation fee to get the scheme started (under way). Of course, this service will not interfere with the private practices.

6. Services be rendered in the clinic to ambulant patient, to hospitalized patients and in the form of home calls. The Clinic should have a full-time staff and the home calls and hospital care be given by the rest of the staff keeping up the free choice of doctor so far as possible.

7. The fees paid for these services may be only a fraction of the present fees now but will be and should be raised as the funds grow.

8. Seventy-five (75) per cent of the Board of Trustees be duly elected members from the Medical Society to be our master ourselves.

9. The Central Admitting Bureau be sustained for its present purpose and free medical service be rendered to indigents in the free clinics in the various hospitals.

10. It is understood that at least 15 per cent of the population will be exempted from this scheme and will be subjects of free private practice with the usual fees, which number of patients will be increased by those who always will get the means and determination to select their own physician to get ideal individual care.

This is a roughly outlined conception which I submit for your consideration.

In summary, may I say this:—

(a) All socialized type of medical services heretofore inaugurated by private groups or states (abroad) were all instigated, organized and set up by laymen without us and usually against us. In these schemes laymen or the state were the rulers and the medical men hired and ruled. All of them competed with organized medicine certainly not with equal and right means. In all of them the fundamental ethical principles of the practice of medicine were omitted or essentially curtailed against the good of the sick. The end was socialized medicine for organized medicine by hesitation and by other factors lost the initiative to offer some scheme itself to prevent this.

(b) Socialized medicine is just before our doorstep and set up that way that it may spread all over the country like fire.

(c) So far as I know nowhere and never did organized medicine work out or offer a group health insurance scheme to the public which he set up and governed by the medical man.

(d) My plan and thoughts which are many of yours, if it could be worked out and materialized quick enough would enable us to create and control this organization ourselves and not be left at the mercy of politicians or racketeers. We shall gain the sympathy and confidence of the masses and if we succeed financially we shall make not only a decent living but to save the ethical fundamentals of our profession. I am sure we may prevent or at least lessen the dangers of socialized medicine under political bureaucracy. We shall have in this organization a more advanced and higher type of medical service than they abroad as it will be ethical and sincerely socially minded indeed.

Mr. President, I move that this problem and proposition be sent to the Executive Committee for urgent study and be formulated, if accepted, by a special legal committee elected by the Society and brought to the floor as soon as possible.

Furthermore, I move that this plan, if worked out, be communicated to the American Medical Association for urgent consideration with the suggestion that it be adopted and introduced all over the country under its egis and direction as home office."

Gov. Ex. 111 is a letter from C. B. Conklin, Secretary of the Medical Society of the District of Columbia, to Dr.

Olin West, Secretary of the American Medical Association, Chicago, Illinois, dated October 9, 1937:

"DEAR DR. WEST:

I thank you for your letter of October 6, 1937.

Personally I wish to express my pleasure and appreciation of learning your reaction to anything that may be proposed that would affect the doctors' best interests. I am happy to state that the Society, in session on the evening of October 6, adopted the following:

WHEREAS, The Bureau of Legal Medicine and Legislation of the American Medical Association has prepared and published a comprehensive report on the activities of Group Health Association, Inc.; and

WHEREAS, The Medical Society of the District of Columbia is in full accord with the content of said report, both as to the established facts set forth therein and the implications drawn therefrom; therefore, be it

RESOLVED, That the Medical Society of the District of Columbia cause a copy of said report to be sent to each of its members as an indication of its future policies with respect to combatting the activities of said Group Health Association and also with respect to the ethical responsibilities of the Medical Society of the District of Columbia and of its individual members.

This appears to eliminate what might have—an undesirable statement of policy.

Sincerely yours, C. B. Conklin."

Gov. Ex. 110 is a carbon copy of a letter from the defendant West in Chicago, to C. B. Conklin, dated October 14, 1937:

"DEAR DOCTOR CONKLIN:

I am greatly obliged to you for your letter of October 9 in which you present the resolution adopted by the Medical Society of the District of Columbia at its meeting on October 6. I am, of course, greatly pleased at the decision of the society.

I am looking forward with pleasure to seeing you here at the Annual Conference of Secretaries of Constituent State Medical Societies on November 19 and 20.

Sincerely yours, Olin West."

Gov. Ex. 37 was read from to the jury, as follows:

"Minutes of Executive Committee of the District Medical Society, held October 11, 1937 (Excerpt).

Dr. William Mercer Sprigg, Chairman, presiding.

Present: Drs. Daniel L. Borden, C. N. Chipman, A. C. Gray, Raymond T. Holden, Jr., R. Arthur Hooe, H. C. Macatee, F. X. McGovern, Thomas E. Neill, John F. Preston, John A. Reed, E. Hiram Reede, Sterling Ruffin, Earl R. Templeton, and C. B. Conklin.

At the conclusion of the reading of the minutes of the preceding meeting, held September 27, 1937, Dr. Sterling Ruffin was recognized. He said he did not think that the Secretary had reported exactly what Dr. R. Arthur Hooe had in mind and would suggest that the minutes be changed to cover the situation. Dr. Ruffin added that Dr. Hooe proposed about the same thing some time previously before the Executive Committee as he did on the occasion for which the minutes were recorded.

The Secretary stated that he would change the minutes according to Dr. Hooe's intent.

* * * * * * * * *

The next motion that Dr. Hooe had to make was that the Executive Committee recommend that the Secretary of the Society address a letter to every civilian hospital Board of Directors in the District of Columbia, informing them of the particular sections of the Constitution that had to do with approval of contracts and warn the hospitals that if they failed to cooperate in every way that they might not be on the approved list.

Much discussion ensued, Dr. W. M. Sprigg reading a prepared letter that he had already arranged to send to the hospital directors relative to this matter.

Finally it was adopted to approve the letter as prepared by Dr. Sprigg with numerous amendments.

Dr. Macatee thought that Chapter VII, Article 4, Section 4 of the Constitution should be drawn to the attention of the members in addition to Chapter IX, Article IV, Section 5.

(Dr. Sprigg was asked by the Secretary for a copy of the letter. He said that he would take it home and revise the letter and later send it to the Society's office.)

Dr. Hooe was again recognized. He stated that there were some 117 women physicians practicing in Washington

and about 12 were members of the Medical Society of the District of Columbia; also there were large numbers of doctors in the city that were in practice and were not members of the Society. This statement was made particularly in rebuttal to a proposed recommendation that the hospitals approve for their courtesy staffs and the regular staffs only members of the Medical Society of the District of Columbia. Without the fold of the Society were a number of 'good doctors.'

Dr. John A. Reed at this point was recognized.

. . . . . .

"He stated in his opinion the American Medical Association should follow through and duly notify the District Attorney, Corporation Counsel, and other legal officials of the apparent violation of law that Group Health Association, Inc., would violate when and if they start to operate.

Much discussion ensued.

The recommendation was finally adopted that the American Medical Association authorities be communicated with and they be asked to send to the Insurance Commissioner, the Commission on Licensure, the District of Columbia Commissioners, the United States Attorney for the District of Columbia, and the Corporation Counsel, substances of the article that appeared in the October 2, 1937, issue of the Journal of the American Medical Association (organization section, p. 39B), and that if the American Medical Association refused or would not comply, then the Secretary send a reprint of said article to each of these officials.

C. B. Conklin, Secretary."

Gov. Ex. 37 was read from to the jury as follows:

"Minutes of the Special Meeting of the Medical Society of the District of Columbia Held Friday, October 15, 1937 (Excerpt)

Dr. Thomas E. Neill, President, presiding.

Present: Drs. A. C. Christie, Harry F. Anderson, Claude Moore, Howard P. Parker, E. Kirby Smith, R. J. Jansen, Thomas A. Groover, E. A. Merritt, Edgar M. McPeak, F. X. McGovern, Wm. P. Herbst, Jr., Prentiss Willson, William H. Hough, W. Warren Sager, F. C. Fishback, C. N.

Chipman, Charles B. Campbell, Joseph S. Wall, and other members to the number of about 155.

* * * * * * *

Dr. W. M. Sprigg asked consent to read a letter addressed to the Board of Directors of the various hospitals in the city. Consent was granted.

Dr. Sprigg read the following:

'October 15, 1937.

Board of Directors of ——— Hospital,
Washington, D. C.

GENTLEMEN:

The Medical Society of the District of Columbia desires to call your attention to Chapter IX, Article IV, Section 5 of the Constitution, as follows:

No member of the Society shall engage in any professional capacity whatsoever with any organization, group or individual, by whatever name called or however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, which has not been approved by the Society.

The Executive Committee is authorized and directed to prepare an approved list of organizations, groups and individuals, by whatever name called and however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, and the same shall be kept in the office of the Secretary-Treasurer. Before any such organization, group or individual can be placed on the approved list of the Society, such organization, group or individual, or the member of the Society proposing professional relations therewith, shall submit to the Compensation, Contract and Industrial Medicine Committee such evidence as the Committee or the Society may require showing the character, activities, financial condition and ethical standards of said organization, group or individual, and after considering the same, said committee shall make a report of its investigation and findings to the Executive Committee for such action as it may deem necessary.

Also, Chapter IX, Article IV, Section 1, as follows:

"Members shall not accept appointment to or continue to serve upon the medical staff of any hospital or dispensary

which is not approved by the Society. A list of approved hospitals and dispensaries shall be available in the Society's office."

Whereas, The Medical Society is using its earnest efforts to give to the people of the District of Columbia, the most advanced and best possible medical care, we, therefore, ask your cooperation by aiding us to carry out this principle.

In view of the above Sections of the Constitution of the Medical Society of the District of Columbia, we hope that your board will see the advisability of making such regulations in your Hospital, so that they may be in accord with and support our efforts.

Respectfully yours,'

Dr. Thomas A. Groover was recognized. He felt that this letter was important enough that each member of the Society should have an opportunity to study it rather carefully. He suggested that action be deferred until members of the Society had received copy through the Society's office. He made this in the form of a motion to the effect that copy be mailed to each member of the Society and be brought up at the next business meeting. Seconded and motion finally adopted.

* * * * * * *

Dr. W. J. Stanton would inquire if this attorney for the Society had passed on the advisability of sending this letter. Dr. Charles P. Cake would inquire what the purpose of this letter was; what is supposed to be accomplished by the letter?

Dr. Sprigg replied that the letter was self-evident, if one stops and thinks when he reads it. He pointed out the Society has been trying to improve itself—to clear its own skirts. He called attention to the policy which had been established for years when hospitals allowed only those members to practice on their staff who were approved by the Board of Directors. He called attention to the differences with Columbia Hospital because the Board of Directors did not approve some member of its staff. It wasn't realized that the Board of Directors had the right to say who shall practice in their hospital. The members of the Society have a perfect right to say who shall be members of the

Society. This letter was merely asking the hospitals to cooperate; nobody was being hit at. He called attention to the fact that one hospital in the city passed a resolution in its board stating that only members of the American Medical Association could practice in that hospital. Dr. Sprigg said the Society does not require that at all; merely that a man who practices in the District of Columbia must be approved by the Society. He pointed out that there are some in the district who are not members of this Society who are just as ethical as he or anyone else. They are on the approved list but are not members of the Society. This letter does not keep those members out of the hospitals. He reiterated that all to be accomplished was to ask the cooperation of the hospitals to help keep the skirts of the Society clean.

One member would inquire if it was meant that members of the Society would not be permitted to practice in a hospital that did not subscribe to an approved list; in other words if they attempt to practice in a hospital not approved by the Society the members of the Society would be duty bound to keep clear of that hospital?

Dr. Sprigg answered that that was correct. He added, 'You have turned a man out of this Society; why?, for good reasons. Now are you going to cooperate and consult with him?' "

* * * * * * * *

Mr. Kelleher: Now I omit a portion.

Mr. Leahy: Won't you get to the point of what the other members said about it?

Mr. Kelleher (Reading):

* * * * * * * *

"Dr. Thomas A. Groover was recognized. He felt that this letter was important enough that each member of the Society should have an opportunity to study it rather carefully. He suggested that action be deferred until members of the Society had received copy through the Society's office. He made this in the form of a motion to the effect that copy be mailed to each member of the Society and be brought up at the next business meeting.

* * * * * * * *

Dr. Reed arose to a point of order, stating that Dr. Sprigg's discussion was irrelevant to Dr. Groover's motion.

Another member said that if he received a copy of the letter tomorrow he would not know what the letter was meant to convey.

Dr. Wm. M. Ballinger pointed out that this letter was merely calling the attention of the hospitals to certain resolutions and constitutional provisions of the Society, asking their cooperation. To his mind it was simply a routine letter asking for cooperation. He could not understand why a copy should be sent to every member of the Society.

Dr. Martin M. McLean would inquire who is going to help the hospitals interpret the letter; they may have the same questions arise in their minds.

Dr. Daniel Davis favored Dr. Groover's motion, stating that he would be interested in seeing the letter before voting on it."

. . . . . .

Mr. Lewin: And the motion was finally adopted. Now I read from the last paragraph:

"Dr. W. M. Sprigg at this point read a recommendation from the Executive Committee to the effect that the American Medical Association authorities be communicated with and they be asked to send to the Insurance Commissioners, the Commission on Licensure, the District of Columbia Commissioners, the United States District Attorney for the District of Columbia and the Corporation Counsel, substances of the article which appeared in the October 2, 1937, issue of the Journal of the American Medical Association (Organization Section, page 39B), and that if the American Medical Association refused or would not comply, then the Secretary send a reprint of said article to each of these officials.

Dr. H. H. Schoenfeld called a point of order, stating that no notice of this business appeared on the announcement for this meeting.

The Chair sustained the objection."

Gov. Ex. 37 was read from to the jury as follows:

"Minutes of the Regular Meeting of the Executive Committee of the Medical Society of the District of Columbia, held October 25, 1937. (Excerpt)

Dr. E. Hiram Reede, Vice Chairman, presiding in the absence of Dr. W. M. Sprigg.

Present: Drs. E. G. Breeding, A. C. Gray, R. Arthur Hooe, F. X. McGovern, Thomas E. Neill, John F. Preston, John A. Reed, E. Hiram Reede, Henry R. Schreiber W. M. Sprigg, E. R. Templeton and C. B. Conklin.

The minutes of the previous meeting, held October 11, were read and approved.

* * * * * * *

At this point Dr. Thomas E. Neill addressed the committee, stating that he had received an invitation from the Home Owners' Loan Corporation Group Health Association in the form of a letter, with enclosed ticket, to a banquet to be held at the Mayflower Hotel on the evening of October 30. He spoke of his contacts with Mr. John Childress, who was very active in this group clinic affair. Dr. Neill added that he had been Mr. Childress' family surgeon and had charged no fees since 1930. Mr. Childress offered him the position as surgeon in the present setup, which he had refused. Dr. Neill was interested in getting some instructions from the committee as to how he should answer the letter.

It was finally thought advisable to have Dr. Neill's secretary answer the letter, using the third person, stating his inability to be present.

It appeared that the banquet would be addressed by Dr. Richard Cabot, Professor of Clinical Medicine at Harvard University. Dr. Neill stated that he knew Dr. Cabot when he was working in the Massachusetts General Hospital. From those contacts and from the editorials that had appeared in the American Medical Association Journal, criticizing Dr. Cabot's views on various sociological problems, that the sending to Dr. Cabot of a statement of attitude of organized profession toward the Home Owners' Loan Corporation setup would be unavailing and inadvisable.

* * * * * * *

Dr. John A. Reed read the following resolutions:

RESOLVED, That the Chairman of the Executive Committee shall appoint a Subcommittee of the Executive Committee consisting of five members of the Executive Committee to study in detail the entire question of prepaid insurance medicine as conducted by or may be conducted by or con-

trolled by reputable acceptable physicians, or by local, county or state societies.

Further, The Committee so appointed shall investigate so far as possible the following points: The need of such practice, the legality in reference to our Society, workability in other localities, the sentiment of the American Medical Association in regard to medical Society controlled practice, formulation of a plan of prepaid insurance medicine to be used whenever in the future it might be deemed advisable or necessary to undertake such a practice, and such other problems pertaining to this practice or considered by the committee worthy of study.

Further, The Secretary of the Society shall be a member of this subcommittee and act in the capacity of secretary to it.

Further, That the facilities of the Secretary's Office be available for use by this committee.

Further, This committee shall report to the Executive Committee when its work is complete or on call of the Executive Committee and not later than the last Executive Committee Meeting of the current Society year.

In the discussion, the Secretary pointed out that the American Medical Association's attitude was very well known, that the headquarters was unalterably opposed to the development of any prepayment plan for the reason that tacit approval might be given to the United States Government or to any other setup to proceed in organization of clinics. Further, experience showed that great rivalry developed when the organized profession in certain cities in the State of Washington started prepayment clinics. Prices were cut along with salaries of the physicians doing the work. Dr. Olin West, in telephone communication from Chicago, had stated definitely that he would not care to be in a position of influencing any action the Medical Society might want to take, but he offered adverse criticism of the development of any prepayment plan, particularly by the profession of Washington.

Motion was made that the resolutions presented by Dr. Reed be adopted. Seconded.

Dr. R. Arthur Hooe made a motion to amend the resolutions to include in this special committee membership the President of the Society and the Chairman of the Executive Committee. Seconded.

Motion with amendment was duly adopted."

Gov. Ex. 203 is a telegram from John F. Hayes to Dr. William C. Woodward, dated October 29, 1937:

"Group Health Association medical staff announced. Doctors Brown, Raymond E. Selders, Allan E. Lee, Edmond D. Wells, R. Stephen Hulburt, M. Scandiffio. Stop. Home Loan Bank Board has granted $20,000 a year for two years to association.

John F. Hayes."

Gov. Ex. 114 is a carbon copy of a letter from Dr. Olin West in Chicago, to Dr. C. B. Conklin, Secretary, District Medical Society, dated October 29, 1937:

"Dear Doctor Conklin:

I have just been informed that the Group Health Association has announced the names of the members of its professional staff, as follows: Doctor Brown; Dr. Raymond E. Selders; Dr. Allan E. Lee; Dr. Edmond D. Wells; Dr. R. Stephen Hulburt, and Dr. M. Scandiffio. Our records indicate that only two of these men are members of the American Medical Association, namely, Drs. Allan Edward L. Lee and Mario Victor Scandiffio. Both of these men have been reported as members in good standing in the Medical Society of the District of Columbia and Doctor Scandiffio has qualified as a Fellow of the American Medical Assocation.

I am informed that the Home Loan Bank Board has agreed to provide $20,000 a year for two years for the use of the Group Health Association.

All of this makes it appear that both the Group Health Association and the Home Loan Bank Board have definitely determined to proceed with their plans in spite of all protests that have been lodged against such procedure.

Very sincerely yours,"

Gov. Ex. 112 is a carbon copy of a letter from Dr. West to W. H. Tibbals, Executive Secretary, Utah State Medical Association, dated October 29, 1937:

"Dear Mr. Tibbals:

I have before me your letter of October 26.

The American Medical Association has very actively opposed the plans of Group Health Association, Incorporated, as has the Medical Society of the District of Columbia, but, in spite of all the efforts that have been put

forth, I have within the last thirty minutes received information from Washington to the effect that the Group Health Association, Incorporated, has announced the names of its medical staff and that the Home Loan Bank Board has agreed to provide $20,000 a year for two years to finance that association. If you will be good enough to examine The Journal of the American Medical Association for October 2, you will find an article dealing with this matter.

We have taken the position that since the practice of medicine by corporations has been declared to be illegal by many states, no agency of the federal government is justified in using federal funds to finance a corporation that intends to engage in the practice of medicine. I understand that some of the promoters of Group Health Association, Incorporated, have taken the position that since licensed physicians are to be employed who will provide medical service for the members of that incorporation, the corporation can not be considered as practicing medicine. That contention has, of course, no merit whatever.

I regret exceedingly that because of a number of meetings of various kinds that have been held here within the last two or three weeks, which has resulted in most of my time being taken up in attending these meetings and in important conferences, I unavoidably got far behind with correspondence and thus is explained my failure to make prompt reply to your first letter.

I am glad indeed to know that Doctor Edmunds intends to be present at * * *."

Gov. Ex. 113 is a letter from Dr. West to Dr. Tibbals, dated November 6, 1937:

"Dear Mr. Tibbals:

I am very glad indeed to have your letter of November 4.

Since I wrote you last, the Group Health Association, Inc., has begun operations. The Home Loan Bank Board has agreed to finance the movement by providing $20,000 a year from its funds for two years. The names of the medical staff, composed of six or seven men, have been announced. Only two are members of any component county medical society or any constituent state medical association. The American Medical Association and the Medical Society of the District of Columbia have opposed

the movement to the fullest possible extent but without success.

Under the circumstances, we shall take care of the necessary travel expense incurred by you in attending the Annual Conference of Secretaries of Constituent State Medical Associations.

With my sincere good wishes, I am,

Very truly yours,"

Gov. Ex. 37 was read from to the jury, as follows:

"Minutes of the Meeting of the District Medical Society of November 3, 1937. (Excerpt)

Dr. Thomas E. Neill, President presiding.

Present: Drs. James A. Gannon, H. R. Schreiber, Albert P. Tibbets, Arch L. Riddick, Frank S. Horvath, H. S. Berton, Henry B. Gwynn, A. Barklie Coulter, S. B. Muncaster, Frank L. Williman, H. P. Ramsey, Fred A. J. Geier, J. H. McLeod, A. J. Connolly, Prentiss Willson, Wm. P. Herbst, W. W. Chase, F. X. McGovern and other members to the number of about 160.

The Minutes of the preceding meeting, held October 27, 1937, were read and approved.

* * * * * * *

Dr. Sprigg, in continuing, read the following:

WHEREAS, The Bureau of Legal Medicine and Legislation of the American Medical Association has made a careful investigation and analysis of the Group Health Association, Inc., and published its report in the Journal of the American Medical Association under date of October 2, 1937; and

WHEREAS, The Medical Society of the District of Columbia is in full accord with the implications therein set forth; therefore, be it

RESOLVED, That the Executive Committee of the Medical Society of the District of Columbia is hereby authorized and directed to take such steps as may be necessary, first, through the American Medical Association and if that fails, second, through its own initiative to inaugurate a program of information through the State Medical Associations and other sources of the dangers of lowering the standards of medical care to be given Government employees in the Home Owners' Loan Corporation organization and other Government agencies as found in the rules of the Group

Health Association, Inc., and many other reasons why it is contrary to sound public policy.

Dr. Sprigg reiterated that the only way to combat this thing would be through the aid and influence of the medical men all over the United States.

Dr. Sprigg in continuing read further recommendations from the Executive Committee.

Upon motion by Dr. Prentiss Willson, duly seconded that the recommendations be considered seriatim. Adopted.

Dr. Stanton was asked if he wished to withdraw his resolutions. He said he did not.

Dr. Prentiss Willson said he wished to endorse Dr. Stanton's resolutions and he hoped it would prevail. He thought there were three propositions which came before the Society which offer a way out of the wilderness, which he did not see in the elevation of the dues. He did not feel that an Executive Secretary would have any effect on the situation. He felt that it was common sense to find out where the Society stands legally in this matter. The thing is either legal or it is not legal. He thought the financial resources of the Society should be conserved so as to obtain that legal opinion. If the matter is illegal it should be ascertained how it may be successfully attacked in the courts. He thought that was common sense. Second, he was of the opinion that the Society should have some plan to offer whereby the public may be able to obtain better medical service. 'Certainly we can give them a better staff than the one published for the H. O. L. C.' The third thing had to do with the American Medical Association. The Home Owners' Loan Corporation plan was like an illegitimate child left on our doorstep. It is not necessary for us to board it for the rest of its life; the matter is for the public as a whole and the police in this situation should be the American Medical Association. He felt that the thing for the Society to do, tonight, would be to pass resolutions demanding that the American Medical Association do something about it. 'Then if the A. M. A. refuses there are ways to influence politicians, gentlemen—politicians listen to votes.' He cited the action of the House of Delegates of the A. M. A. on the contraception question. 'Let us say to the A. M. A., if you do not accept our demand and do something we are going to approach directly every state medical association in the country and we are going to demand from

them that they demand from you that you take action in this matter.' 'That in my opinion is the answer to the H. O. L. C. and not to put in a fulltime executive secretary unless he might be a Farley, Roosevelt, etc. . . . .

Dr. R. Arthur Hooe would ask Dr. Willson a question. 'In the event that it is found to be legal would you tell us what you recommend?'

Dr. Willson said that assuming that it is found to be legal then the only thing for the Society to do would be to adopt and give the public something very much better.

Dr. Hooe, in continuing, stated that he wanted to support the preliminary remarks made by Dr. Stanton, support the remarks made by Dr. Vann and certain remarks made by Dr. Willson. The most important thing was to impress upon the minds of the members that this problem was a national problem. 'If there is something this Society can do and will do to impress that upon the American Medical Association it is of the greatest vital importance. Under new business it will be vitally important that I, as chairman of the C. C. & I M. Committee, bring a matter to your attention involving the stepping in of that committee in a matter in connection with the H. O. L. C. In the meantime I sincerely trust that Dr. Stanton's resolution, as I have followed it carefully, will not carry.' He felt that it would be psychologically deadly for the Medical Society to step in and do the things suggested in Dr. Stanton's substitute. Public opinion would be that the members of the Society were failing to get funds in their pocket book. He thought it wise to wait a little while before stepping in; that it must be taken into consideration that the Society appearing as a complainant should realize that it is not consistent with the charter, which is created to incorporate the Society for the sole purpose of advancement of medical science. The charter would probably be taken away and the Society's property would immediately be attached. Therefore, Dr. Hooe was of the opinion that the Society must step cautiously. Dr. Hooe said the membership should not think for one moment that the Executive Committee was not busy with this matter. For months the Committee has worked diligently and will continue to do so.

Dr. Stanton said he did not mean to give the impression that the committees were not busy.

Dr. Philip A. Caulfield pointed out that concerted effort should be made to get within the membership of the Society

some 600 or 800 members of the profession who are not on the rolls. Many of these men don't belong because of indifference and some feel that the Society does not offer them anything. It now so happens that their livelihood is jeopardized. He thought this was an opportune time to make a drive to get these men in the Society. He quoted a form letter that should be circularized to the prospective members stating the situation that has arisen and urging these men to become members of the Society. 'Unless we take that action we are going to have a lot of men jumping over the fence when this thing gets too big for us.' "

Now I will omit something and turn to the next page.

Mr. Leahy: I think they have been talking so much about this resolution, the Stanton resolution on page 3, it might be well to go back to that.

Mr. Lewin: Do you wish me to do that?

Mr. Leahy: Please.

"Dr. William J. Stanton was recognized in the discussion. He offered the following substitute for the recommendation of the Executive Committee:

WHEREAS, It is reported to the Medical Society of the District of Columbia that the Group Health Association, Inc., a corporation organized under the laws of the District of Columbia proposed to and is now engaged in the practice of medicine in the District of Columbia, Maryland, Virginia and possibly other states; and

WHEREAS, In the Journal of the American Medical Association on October 2, 1937, Volume 109, pages 39B to 46B, an article was published disclosing in substance that the said Group Health Association, Inc., cannot be licensed to practice medicine in the District of Columbia, and that the United States District Attorney for the District of Columbia and the Corporation Counsel for the District of Columbia have both held that a corporation cannot lawfully engage in the District of Columbia in the practice of a profession that requires licensure or registration as a condition precedent to the lawful practice thereof, even though the corporation undertakes to practice through licensed or registered agents; and

WHEREAS, The Executive Committee of the Medical Society of the District of Columbia has made certain recom-

mendations to the Medical Society for the District of Columbia regarding the said Group Health Association, Inc.; and

WHEREAS, Said recommendations do not indicate that the said Executive Committee made a complete and thorough investigation of the purposes and activities of the Group Health Association, Inc.; and

WHEREAS, Said recommendations do not disclose that the said Committee had or obtained the advice and assistance of counsel; and

WHEREAS, The said article that appeared in the Journal of the American Medical Association makes no recommendations whatever as to what, if any, steps this association should take in the premises; therefore, be it

RESOLVED, By the Medical Society of the District of Columbia at a meeting duly called on the 3rd day of November, 1937, that the recommendations of the Executive Committee be recommitted to said committee, and that said Executive Committee is hereby authorized and directed to investigate and determine whether or not in its judgment the Group Health Association, Inc., is engaged in the unlawful practice of medicine in the District of Columbia as prohibited by Section 152 of the Code of the District of Columbia, 45 Stat. 1338, Chapter 352, Section 41, February 27, 1929; and that said Executive Committee is hereby authorized and directed to obtain the assistance and advice of counsel in its investigation of the said Group Health Association, Inc., and to institute and prosecute in the name of the Association and/or for its benefit, and/or for the benefit of the members thereof, and/or in the name of the said Committee, as such Committee in addition to the names of one or more individual members of the said committee, such actions as in their judgment and discretion may be deemed appropriate and proper for the suppression of the unauthorized practice of medicine in the District of Columbia; and be it

FURTHER RESOLVED, That the said Executive Committee should be and is hereby instructed that in instituting and prosecuting such actions, no exceptions should be made as to any firm, person and group or class of business or occupation which such person, persons or organizations are alleged to engage in the unauthorized practice of medicine and in which the said Committee feels action

should be instituted whether for declaratory judgment, injunction or other relief; and be it

FURTHER RESOLVED, That for the purpose of prosecuting any such action or actions so instituted by said committee, the said committee shall continue in office as a Standing Committee of this association until the conclusion of such litigation, and that said committee shall be charged with the conduct of such litigation to a conclusion, and that the necessary expenses thereof shall be defrayed by this association; provided, that no member of said committee shall receive any remuneration for services in such connection.

Motion was made that the foregoing resolutions be adopted. Seconded."

Mr. Lewin: Is that satisfactory?

Mr. Leahy: Yes.

Mr. Lewin: Now, turning back to page 8. Have you something, Mr. Richardson?

Mr. Richardson: Yes, on page 3; it is not on the same page in your record. There is a notation that this resolution was withdrawn.

Mr. Lewin: That is right. That is the reason I didn't read it. Anything else?

Mr. Richardson: Yes. You had gotten to the point of what Dr. Caulfield said.

Mr. Lewin: Yes. Do you want me to go along with that?

Mr. Richardson: Yes, if you will.

"Dr. J. H. McLeod felt the Society should attempt to find out how much backing the H.O.L.C. has from the United States Government. Personally he was sure they had plenty of backing from the Government and when the Society fights this thing it is fighting the Government. He urged caution. They can very quickly make it legal.

Dr. Oscar Wilkinson said he felt that if the members of the Society are going to be sheep they should be sure they are going to be sheared. In answer to Dr. Hooe's remarks about them taking the charter, he felt that if something is not done they will take more than the charter. He said he was entirely in accord with what Dr. Willson had to say about the A. M. A. 'This illegitimate child has been placed on our steps but it certainly is not our baby. We should tell the A. M. A. what our opinion is and their duty in

this matter.' Dr. Wilkinson said he was in accord with what Dr. Vann had to say and that all members should contact their friends in the profession in the states soon. In answer to the question as to whether the Government is behind this proposition, he would say 150 per cent behind it. 'If we permit this to go through it is the first step toward socialization of medicine which is an injustice to the public and the profession. We should certainly not permit ourselves to lie supinely on our backs and let this thing be lauded over.'

Dr. W. Warren Sager said he felt that if this was allowed to go on several Government departments would align themselves. He could see nothing wrong in obtaining legal opinion. He felt no more time should be lost than possible. He thought it well to engage a full-time Executive Secretary and an insurance setup could be so arranged as to provide medical care. He agreed that the society could provide a better staff than that announced by the Group Health Association. He said he was agreeably surprised to hear of the response received by Dr. Vann from his communication with fellow-members of the profession. He felt that the Society needed every man they could get as members.

Another member said it was announced that the Group Health Association would save the H. O. L. C. and other affiliated bodies that they will save them in sick leave. They will show in actual figures that the people will stay out half as much as the privately treated patients. In his opinion that statement should have been answered in the press. Another issue to his mind was the check-off that was contemplated. Monthly withdrawals were to be made from the salaries before turned over to the employee. To him there seemed to be a question as to whether it is legal to check off that amount.

The Chair stated that the questions could not be answered at this time.

Dr. Sprigg said he was thoroughly in accord with the general principles that have been suggested. He felt, however, that the problem confronting the medical profession was different than the proposition which was facing the legal profession when the banks were practicing law. He said the people of the District haven't any vote and no one interested in them. It was his opinion that the Society would have to go behind the scenes and get the politicians

interested. He suggested that the best way to attack the problem would be through the Medical Associations throughout the United States, and all the Executive Committee was asking was authority to do this.

Dr. A. C. Christie was recognized. He said it seemed that everyone felt that something should be done about this matter. He felt that the Society ought to do something wise rather than something foolish that will do it more harm than good. In answer to Dr. Willson's remark that the members have been a bit hysterical, he felt that they had something to be hysterical about. He agreed with Drs. Hooe and Sprigg in this matter; that to pass a resolution simply to sue somebody would be unwise. He agreed with Dr. McLeod that the group would simply have another law passed in order to carry on. He thought the best way would be to pass the resolutions presented by the Executive Committee if the committee would go energetically about it. He stated that the whole feeling of the Society is that the Executive Committee has not been energetic enough; the committee could contact the A. M. A., possibly send a committee to Chicago, and go at the situation as if they meant to bring it about. He was of the opinion that the American Medical Association ought to help the local profession. He did not agree with Dr. Willson in his remarks about the Executive Secretary. He thought an Executive Secretary should be on the job. He was sure the Society would not get anywhere by filing suit. 'What ever judgment you get against them they are going to continue anyway. Let's pass this resolution of the Executive Committee but let's tell our Executive Committee we want them to be on the job and be a little more energetic so far as we can see, than they have been before.'

Dr. Sterling Ruffin thoroughly agreed with Drs. Stanton and Willson but did not feel that the time was opportune for this procedure. Later on if Dr. Stanton would introduce his resolutions Dr. Ruffin said it would give him pleasure to support it, but he was opposed to the Society getting mixed up in the courts at this junction. He felt there would be no end to undesirable publicity and misunderstanding. He thought the most effective way would be to contact representatives and senators while they are still at home, through the physicians in the states. He said that was the plan which the Executive Committee has in mind at the moment. He hoped that Dr. Stanton's sub-

stitute would be postponed for consideration at some later date.

Dr. W. J. Stanton said he was very much gratified that his substitute motion had caused so much discussion. He would like to compromise the matter to the effect that if he could be assured that the Society would empower the President to appoint two members to contact the American Medical Association in person, and also to contact the President of each Medical Society in the United States, and bring back a report at the next regular business meeting of the Society, he would withdraw his motion until that time.

Dr. E. J. Cummings would second this suggestion.

Dr. Prentiss Willson would amend to include that these emissaries should be armed with a request or demand for action by the American Medical Association.

The Secretary said he knew personally that the American Medical Association authorities have been making some effort to contact the Society and have been keeping in touch with the local situation. He said that Dr. Olin West, the Secretary, had called him on the telephone from Chicago on several occasions; further that Dr. R. G. Leland, Director, Bureau of Medical Economics, was in his office about 10 days ago discussing the local situation. The A. M. A. has a local representative who also has been very much interested. He merely cited this to show that the Association is interested in the local situation. He personally made contacts with certain state secretaries. Dr. Holman Taylor, Secretary of the Texas State Medical Association, in his letter expressed deep interest in the local problem. He pointed out that on the 18th and 19th of November the annual Conference of Secretaries would be held in Chicago. At this time there would also be in attendance some Presidents and editors. In addition, at that time there is a meeting of the Board of Trustees, which board has power to act for the Association during the interim that exists between the meetings of the House of Delegates. He felt that the strategic time would be the 18th and 19th of November. He said he was not attempting to suggest that the two delegates would include himself and Dr. Yater, whose expenses are paid by the A. M. A., but he merely wished to bring the matter to the attention of the members.

The Chair at this point stated that the question before the house was 'if the Society would appoint a committee

of two at this meeting to go to Chicago to get in touch, contact immediately members of the American Medical Association to find out what they would do, or can do, or won't do, and whether they are with us or against us, that Dr. Stanton is willing to withdraw his substitute.'

Dr. Prentiss Willson said he felt that did not cover the situation. He made a motion to the effect that the President be authorized to appoint a committee of three (3) members to retire from the hall, one of whom shall be Dr. W. J. Stanton, to draft suitable resolutions expressing the view of this Society, and report back to the meeting tonight. He felt that the matter was too important to be done in a haphazard way.

Dr. Willson's motion was seconded.

Dr. Hooe would inquire if it is felt that any three members are competent to retire and draft an expression of this Society in so short a time. He did not think it was possible.

Dr. Willson said it was not his intention to limit the emissaries. He felt that the resolution should be carefully worded.

Dr. Willson's motion was finally adopted. The Chair appointed the following committee to retire from the room and prepare suitable resolutions: W. J. Stanton, Sterling Ruffin, F. X. McGovern.

Later in the evening Dr. Stanton made the following report of the committee's deliberations, presenting the resolutions:

That the President of the Medical Society of the District of Columbia appoint a committee of two members to go to Chicago as promptly as practicable and lay before the proper officials of the American Medical Association the views of this Society with regard to the activities of Group Health Association, Incorporated, including:

1. That inasmuch as the movement threatens to be nation-wide in its scope, and affect every component organization of the American Medical Association, it is the duty of the American Medical Association to oppose immediately with all its might this entering and possibly illegal wedge to the socialization of medicine.

2. That in view of the tremendous import of the Group Health Association movement to the membership of the

Medical Society of the District of Columbia and also to the profession at large and to the public, it is the opinion of the Medical Society of the District of Columbia that it is the duty of the American Medical Association to combat vigorously Group Health Association, Incorporated.

3. That the Medical Society of the District of Columbia waives any question of regional interference by the American Medical Association.

4. That the American Medical Association give a definite and immediate expression of its intended action in this matter.

Upon motion, duly seconded, the foregoing resolutions submitted by the special committee were adopted.

* * * * * * * *

5. That a special committee be appointed by the President, consisting of himself, as chairman, and the chairmen of the standing committees, to urge upon the hospitals, through their medical staffs and/or boards of directors, the wisdom of endorsing the stand of the Medical Society in the matter of lay corporate practice of medicine and of excluding from their approved lists the names of any physicians in the employment of or connected with, any corporation, group or individual, practicing medicine directly or indirectly in violation of the provisions and spirit of the Constitution of the Medical Society of the District of Columbia.

Dr. Prentiss Willson would inquire if the foregoing was in lieu of the recommendation concerning the sending of a letter to the Boards of Directors and Medical Staffs of the local hospitals, as published to the membership on the agenda. He said he intended to move a substitute motion for the letter which appeared on the agenda. If the Society approved the motion proposed by Dr. Sprigg it would be inexpedient to send the letter out at the present time. He was of the opinion that the Hospital Committee, composed of members of the Society working on hospital staffs in Washington would be a more suitable committee to handle the matter. He offered the following substitute:

WHEREAS, The Medical Society of the District of Columbia has an apparent means of hindering the successful operation of Group Health Association, Inc., if it can pre-

vent patients of physicians in its employ being received in the local private hospitals; and

WHEREAS, The Medical Society of the District of Columbia has no direct control over the policies of such hospitals as determined by their lay boards of directors, except through its control of its own members serving on their medical staffs; and

WHEREAS, Conflicts between the Medical Society of the District of Columbia and any local hospitals arising from an attempt to enforce the provisions of Chapter IX, Article IV, Section 5, of its Constitution should be assiduously avoided, if possible, because of the unfavorable publicity that would accrue to its own members; therefore, be it

RESOLVED, That the Hospital Committee be, and is hereby, directed to give careful study and consideration to all phases of this subject and report back to the Society, at the earliest practicable date, its recommendations as to the best way of bringing this question to the attention of the medical boards and boards of directors of the various local hospitals in such a manner as to insure the maximum amount of practical accomplishment with the minimum amount of friction and conflict.

Dr. A. C. Christie seconded the above resolutions, but would ask that these resolutions be a substitute for the Resolution submitted by Dr. Sprigg and also for the letter that has been published to the membership.

Dr. Willson said he accepted this.

. . . . . .

Upon standing (counted) vote Dr. Willson's substitute resolutions were adopted in lieu of the letter recommended by the Executive Committee and the resolutions presented by Dr. Sprigg. (Vote: 68 Ayes; 53 Noes.)

. . . . . .

In discussion, Dr. Sprigg pointed out that the letter contained on the agenda is very simple, very concise, brings no charge against anybody, and suggests no charge or injury, but suggests to the hospitals that they take action in line with what the Society has done; their attention is called to the Constitution and suggestion is made that they may see their way clear to make such rules. He did not see that any harm could result by contacting the hospitals

through the Boards of Directors and Medical Staff, as recommended by the Executive Committee, as follows:

* * * * * * *

Dr. Sprigg, in continuing, stated that this letter was the simplest thing the Society could send and he felt sure it could not offend any hospital.

Dr. E. Kirby Smith thought the letter could cause a lot of unfavorable comment against the Medical Society and the profession by the lay boards. He felt that this information could be conveyed to them orally, then they would have nothing to fight back with.

Dr. R. Arthur Hooe said he was of the opinion that Dr. Willson's substitute offered some sound points; one in particular that which suggests that this committee be composed of members of the hospital staffs. He thought it was inconceivable that the hospitals would not acquiesce to reasonable principles. Another objection he had to Dr. Willson's resolution was that the committee is delegated to take its time and report back to the Society. He said the letter as proposed by the Executive Committee had been very carefully written.

Dr. Willson took exception to Dr. Hooe's remarks about the letter being carefully written. He called attention to the first sentence:

'The Medical Society of the District of Columbia desires to call your attention to Chapter IX, Article IV, Section 5 of the Constitution, as follows:'

Dr. Willson said it was not stated what Constitution was involved; whether the Constitution of the United States, etc. In reference to the phrase in the second last paragraph 'best possible medical care,' Dr. Willson was of the opinion that the impression would be gained that the Society was scared to death and were trying to get the help of the Boards. In addition he felt that the letter carried a veiled threat to the effect that if the hospitals did not comply the Society would unstaff them. He said he hoped the Society could control the members; sometimes he had a little doubt.

Dr. Sprigg informed Dr. Willson that 'the' should have been 'its.'

Dr. John A. Reed said that for once he believed Dr. Willson to be paradoxical. He felt that if this was referred to the Hospital Committee there would be further delay.

He was informed that every hospital in the city was co-operating with the medical profession against the Group Health Association, with one exception. To his mind the letter as written was a very kindly letter. He could see no objection to the letter being sent to the hospitals.

Upon standing (counted) vote Dr. Willson's substitute resolutions were adopted in lieu of the letter recommended by the Executive Committee and the resolutions presented by Dr. Sprigg. (Vote: 68 Ayes; 53 Noes.)

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Dr. Allan E. Lee, tendering his resignation as an Active Member, as follows:

'October 30, 1937.

Dr. C. B. Conklin, Secretary, D. C. Medical Society, Washington, D. C.

DEAR DOCTOR CONKLIN:

I hereby submit and tender my resignation as a member of the medical Society, to take effect at once.

Respectfully, Allan E. Lee, M. D.'

It was explained that this was the first reading of Dr. Lee's resignation.

Dr. Mario Scandiffio, tendering resignation as an Active Member of the Society, as follows:

'October 29, 1931.*

Dr. C. B. Conklin, 1718 M Street, N. W., Washington, D. C.

DEAR DOCTOR:

I hereby tender my resignation as a member of the Medical Society of the District of Columbia.

This is to take place immediately.

Very truly yours, M. Scandiffio.'

Note: *Letter received in the Society's office on October 30, 1937.

This was the first reading of this resignation.

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Dr. R. Arthur Hooe was recognized. He said, in reference to the two resignations (Drs. Scandiffio and Lee)of

Active Members, that he thought that a special meeting of the Society would be called at an early date, but in view of the fact that reports would have to be made at a regular meeting of the Society, the matter would have to wait. He said that Drs. Scandiffio and Lee were engaged by the Home Owners' Loan Corporation to serve in the clinic of the Group Health Association. A registered letter was mailed to both doctors, as follows:

'You are hereby directed to appear before the Compensation Contract and Industrial Medicine Committee, on the evening of Thursday, November 4, 1937, at 8 p. m., in the Medical Society Building.'

Dr. Hooe said he thought the members would be interested in having this information. He said his committee would meet and prefer charges against these two members for violation of the provisions of the Constitution.

C. B. Conklin, Secretary."

Gov. Ex. 46 is a letter from Thomas E. Neill, President of the District Medical Society, to Dr. J. Ogle Warfield, Jr., Chairman, Hospital Committee, Washington, D. C.:

"November 5, 1937.

DEAR DOCTOR WARFIELD:

This is to inform you that the enclosed resolutions were passed by the Society, in session on the evening of November 3, 1937. Your prompt attention to this matter is requested.

Very truly yours, Thomas E. Neill."

Enclosed is a copy of the resolution adopted by the Medical Society of the District of Columbia, in session on the evening of November 3, 1937.

The Court. Hasn't that been read?

Mr. Kelleher. It has been, but I should like to read it again, your Honor.

The Court. I don't think we should repeat.

Call the jury's attention.

Mr. Kelleher. May I call attention to what it is?

The Court. Call their attention.

Mr. Kelleher. To what it is?

The Court. Yes.

Mr. Kelleher. It is the resolution dealing with an apparent means of hindering the successful operation of Group Health Association, Inc., by preventing patients of physicians in its employ being received in the local private hospitals.

Mr. Leahy. Is that the Willson resolution?

Mr. Kelleher. Yes.

Mr. Lewin. Yes, that is the Willson resolution, the one that appears on the indictment.

Gov. Ex. 115 is a telegram from Olin West in Chicago to Dr. Robert A. Hooe, dated November 4, 1937:

"Woodward Leland and I will be glad to see you ten a.m. Saturday stop Doctor Hayden will not be able to be present.

Olin West."

Gov. Ex. 116 is a telegram from Hooe to West, dated November 5, 1937:

"Will arrive in Chicago 820 a.m. November 6.

R. Arthur Hooe."

Gov. Ex. 117 is headed "Conference re Group Health Association, Inc., November 6, 1937":

"The conference convened at 10:20 A. M. in the office of the Secretary and General Manager of the American Medical Association with the following in attendance: Dr. R. A. Hooe and Dr. F. X. McGovern of the Medical Society of the District of Columbia, and Dr. Olin West, Secretary and General Manager, Dr. W. C. Woodward, Director of the Bureau of Legal Medicine and Legislation, and Dr. R. G. Leland, Director of the Bureau of Medical Economics, of the American Medical Association.

Abstract of the discussion follows:

Doctor Hooe. The Medical Society of the District of Columbia is now and always has been mindful that as a result of the things accomplished by the American Medical Association, scientific American medicine has reached highest peak reached by any civilized nation.

The Medical Society of the District of Columbia at its regular meeting held November 3, 1937, adopted the following resolution: That the President of the Medical Society of the District of Columbia appoint a committee of two

members to go to Chicago as promptly as practicable and lay before the proper officials of the American Medical Association the views of this society with respect to the activities of Group Health Association, Inc., including: First, that as the movement threatens to be nationwide in its scope and affect every component organization of the American Medical Association, it is the duty of the American Medical Association to oppose immediately with all its might this entering and possibly illegal wedge to the socialization of medicine; secondly, that in view of the tremendous import of the Group Health Association movement to the members of the Medical Society of the District of Columbia and also to the profession at large and to the public, it is the opinion of the Medical Society of the District of Columbia that it is the duty of the American Medical Association to combat vigorously Group Health Association, Inc.; thirdly, that the Medical Society of the District of Columbia waives any question of regional interference by the American Medical Association; fourthly, that the American Medical Association give a definite and immediate expression of its intended action in this matter.

The operations of Group Health Association, Inc., began on Monday last. Two members who contracted with Group Health Association, Inc., were members of the Medical Society of the District of Columbia, and a third had sent in his application which has been withdrawn within the past ten days. There is nothing to be done about this third member at the present time. The resignations of the other two were received by the Medical Society of the District of Columbia within the week. A letter was sent to each of them asking him to appear before the Compensation, Contract and Industrial Medicine Committee. They did not appear but the committee received a communication from one of them. The committee unanimously recommended to the executive committee of the Medical Society of the District of Columbia that disciplinary measures be taken.

Doctor Woodward raised the question as to whether the notice to these members had told them of the charges that were to be preferred against them and stressed the necessity for following strictly the procedure as laid down in the constitution and by-laws of the Medical Society of the District of Columbia. Further discussion was deferred to a time when it could be gone into in detail by Doctor Woodward.

Doctor Hooe: There is no use to go into the demerits of the HOLC health movement since the attitude of the Medical Society of the District of Columbia is known, but it is necessary to discuss the difficulties that confront the medical profession in Washington because of this movement which is the entering wedge of socialized medicine in the United States.

Doctor Hooe, in reply to Doctor West's statement that the inference in his statement has been that the American Medical Association has done pretty well as a scientific organization but has not concerned itself with more than scientific medicine, said that the statement was made in the broadest possible terms. Doctor West was not absolutely sure what the record will show, but he was inclined to think that the American Medical Association had been fighting HOLC before the Medical Society of the District of Columbia became actively interested.

Doctor Hooe then presented figures to show that out of a total population of 619,000 in Washington, after certain deductions were made for government employees, negroes, etc., there remained a total white population of only 189,127 including indigents and that all classified physicians of Washington numbered 2,100.

Doctor Hooe: The people in Washington are without suffrage, the entire city, including prosecuting attorney and corporation counsel, being selected by the Administration, and it is reasonable to expect such appointees to cater to the desires of those to whom they turn for their bread and butter, so that this matter has to be gotten at through Congress. Who is best qualified to reach the man in Congress, the little state medical society at Washington or the doctor at home through the states? Who will suffer from the experiment? Will not the entire medical profession? It is quite clear what will happen to the medical profession at Washington.

Doctor West: Doctor Hooe has not made one statement of any kind that the American Medical Association has not fully considered and acted on where possible.

Doctor McGovern: Since the Group Health Association, Inc., has started, the medical profession in Washington has become acutely aroused and the question is what shall the Medical Society of the District of Columbia do? The resolution introduced before the Medical Society of the District

of Columbia suggested immediate legal action, but some thought that possibly some other plan might be offered. The Medical Society of the District of Columbia is in a quandry to know what to do and is seeking guidance here.

Doctor Hooe: Some young people in the Medical Society of the District of Columbia are very much aroused and one of them introduced a resolution which stated in substance that the Society should get busy and prosecute at once regardless of what happens. The resolution was withdrawn only on condition that two delegates be sent immediately to Chicago to confer with the American Medical Association to see what could be done about this.

Doctor West: It is quite possible that the situation in the District of Columbia is no worse than that which may develop in some other places, as for instance in Denver. Denver has relatively as large a government population as Washington and, perhaps, larger. In some states work is being done in contacting individual members of Congress on this matter: An effort is being made to see if members of Congress can not be stimulated to oppose this movement.

Doctor McGovern presented a statement to indicate the uselessness of Washington men attempting to contact men in Congress.

Doctor McGovern: It seems that the intelligent way to go about this thing is politically and it would seem the wisest thing to do would be for the parent organization to contact the private physician of every congressman and senator and carry on a campaign that way.

Doctor West: Political attempts always bring reprisals.

Within a few days there will be a conference of secretaries and editors of state medical associations and one of the things that will be discussed is this HOLC matter. The Board of Trustees has been considering this thing for a long time, and has given instructions to oppose it.

To Doctor Hooe's question as to whether or not the American Medical Association has exhausted all means of combating this thing, Doctor West replied that it certainly had not and had no idea of quitting.

Doctor Hooe: Do you not believe that the press all over country should be directed to state to the people in no uncertain terms the fact that the American Medical Association opposes such practice and why?

Doctor West: A conference of capable newspapermen was held here a few days ago and this among many other subjects was discussed, but the principal interest of the newspapermen is the method of securing and publishing news. There are radicals among newspapermen as well as among congressmen and physicians. The Committee of Physicians, a self-constituted body, has secured signatures of about 400—out of 106,000 members of the American Medical Association—physicians evidently to show that the policies of the American Medical Association do not represent the feeling of a large element of physicians. Newspapers are playing that up.

Doctor McGovern: The Society feels very definitely that it should have some kind of expression from the American Medical Association as to what it might do or is doing or can do in relation to the national aspects of this thing.

Doctor West: The American Medical Association tried to utilize the services of some of the most important people in Washington to get at the bottom of this thing when it was first started, before the Medical Society of the District of Columbia ever raised a finger about it, but we could not get a copy of the contract nor information that was definite or authentic in spite of all efforts to do so. This isn't so easy that all that is necessary is for the American Medical Association to say something. The American Medical Association will do the best it can. Its views are thoroughly understood in official circles in Washington, but that doesn't seem to make any difference.

Doctor Hooe: Their own legal bureau informs them it is entirely legal.

Doctor Woodward: No question about the illegality of it.

Doctor Hooe: Assuming that it is illegal, this Administration can very easily make it legal.

Doctor Woodward and Doctor West did not agree that it would be easy to legalize it.

Doctor West: Nothing can be accomplished by a great public upheaval. A very considerable number of the newspapers of this country are more or less convinced that there will have to be some extremely radical changes in medical practice, including some form of insurance and some form of government insurance. The American Medical Association does not agree. It does not approve any compulsory sickness insurance and has great fear of voluntary sickness insurance because the history of compulsory sickness insur-

ance shows that voluntary sickness insurance has been the forerunner.

Doctor McGovern: Do you feel that the medical profession is rendering medical service to the people as well as it could or should?

Doctor West: It is doing it better than any other profession on the face of the earth. The situation will never be ideal because many persons won't take medical service when it is easily available. Replies to a questionnaire sent out by the American Medical Association definitely disproved the statement to the effect that one-third of the people of this country were not getting and could not get needed medical service.

Doctor McGovern: Do you think that this country will eventually escape sickness insurance?

Doctor West: I don't know, but I am quite certain that sickness insurance systems in older countries are not operating as satisfactorily as some would have us believe and I think that it is probably true that some of them are losing ground.

Doctor McGovern read an abstract from a paper he had presented over four years ago as retiring president, showing the indifference of medical organizations.

Doctor West: The only organization in this country that did not exhibit smug indifference to the trend toward centralized control of medicine was the American Medical Association.

Doctor McGovern: Do you fell that everything is all right in American medicine today? Realizing that the United States is now the only large nation that has not some form of centralized control of medicine, what is behind it as far as the people are concerned: Why all these different types of practice springing up in the United States if behind it there does not seem, in the minds of laymen and of some physicians, to be some need?

Doctor West: The American Medical Association thinks there is 'a need.' There always has been and always will be as long as there are advances in medical knowledge. But the organized medical profession has tried hard to have the need met and has done very well under all the circumstances.

Doctor McGovern: In Washington there is the Group Health Association and behind it, possibly, socialized medicine. Those two situations confront the physicians in Washington who are determined to do something about the mat-

ter. How are they going to go about it? The advice and cooperation of the American Medical Association is solicited.

Doctor West: The society has had the help of the American Medical Association and will continue to have it.

Doctor McGovern: The question in the minds of some is as to whether it should be fought legally.

Doctor West: It is my purely personal opinion that somebody has to fight it legally. If the American Medical Association does it, it may arouse forces that will make it more difficult.

Doctor Hooe: Why not the Medical Society of the District of Columbia by the same token?

Doctor Woodward: I suggest that you have competent legal counsel advise you. The primary move is clearly to see whether your district attorney or your corporation counsel or the commissioners or the board of licensure or the insurance commissioners will act. Whether or not they will act can not be determined until the facts are formally laid before them.

Doctor McGovern read from the Washington Evening Star an article concerning this matter. During the discussion that followed it was pointed out that Corporation Counsel Seal emphasizes the fact that he will not be concerned whether a corporation instead of an individual is engaged in medical practice. The article in the Washington Evening Star states that Mr. Seal will begin the study of the Group Health Association, Inc., to determine whether it is operating an insurance plan and whether it should be licensed by the District Insurance Department. The suggestion was offered that it may be the duty of the United States District Attorney or some other body to act. There followed discussion concerning the powers of the Medical Society of the District of Columbia and its right to institute proceedings. Doctor Woodward offered to furnish citations regarding corporations engaging in medical practice.

Doctor McGovern: There is a great sentiment in the Medical Society of the District of Columbia to formulate some plan.

Doctor West: I don't know whether or not you remember that I suggested, when in Washington some time ago, that you give that idea some consideration, but, after thinking about it later, I decided that probably I shouldn't have offered that suggestion because you already formulated a

plan and I am not convinced that that plan did not have something to do with the stimulation of this HOLC movement. A plan almost inevitably tends to create a sentiment for the formation of other similar plans.

Doctor McGovern: There is a very definite sentiment to initiate some kind of plan. There are three or four different ones in the making now, and it is necessary to ask you gentlemen how far we may go along.

Doctor West: If you go into the corporate practice of medicine, you are on the same ground as the HOLC scheme.

In reply to Doctor McGovern's question as to whether or not the Medical and Dental Service Bureau is practicing corporate medicine, Doctor West stated that that scheme is supposed to help people meet bills. It is more concerned with payment of bills than with practice of medicine.

Doctor Hooe: Let us assume now that the plans suggested thus far are not agreeable. What can be done to meet the situation?

Doctor West: I can only tell you again that you should go to every official agency concerned in this thing and get them to look into it with a view not only as to whether or not it is an insurance scheme subject to an insurance law but also as to whether it is not definitely a corporation practicing medicine.

Doctor West: There are medical societies in this country that have notified the people in their communities that the members of the society will take care of them and that if they can pay, all right, but if they can't pay, they will be taken care of anyhow.

Doctor Hooe: In the matter of the HOLC, what is your future program?

Doctor West: It is just exactly the same as it has been all the time. We shall continue fighting it every way we can. We are going to get all the help we can get. We are at least going to keep on until we are instructed otherwise.

Doctor Hooe: Executive Committee recommended that a letter be addressed to the medical boards of the various affiliated hospitals in Washington, calling attention to the HOLC health group, insisting that the hospitals take cognizance of it, and, among other things, calling attention to the fact that the physicians employed by such groups are not acceptable to the Medical Society of the District of Columbia.

In reply to Doctor McGovern's question as to how far the Medical Society of the District of Columbia might go in controlling the hospitals, Doctor West expressed some doubt that the society can effect such control.

Doctor Hooe: Is it not, in your opinion, most reasonable that the hospitals should acquiesce in this matter?

Doctor West: It is reasonable that they should do it but as to whether or not they will, that's another question. Suppose they don't?

Doctor Woodward: You would be absolutely certain to elicit at least an attempt at legislation in Congress that would prevent your doing what you propose.

Dr. Hooe: At a meeting of a group of the Medical Society of the District of Columbia last Sunday night it was brought out that all the civilian hospitals in Washington except, probably, one had fallen right into line, which was very gratifying.

Doctor McGovern: Is there any objection if the Medical Society of the District of Columbia goes ahead and carries on a campaign throughout the states?

Doctor West: In thirteen days there will be a conference of secretaries and editors of constituent state medical associations at which many other officers of constituent state and of some component county societies will be present. The whole story of the HOLC movement will be brought before the Conference and the point of view of the members of the Conference can be obtained and presented better than by spending money in written material. The members of the Conference will be given the entire picture, and Doctor Conklin and Doctor Yates, members of Conference, will be given full oppportunity to say anything they want to say.

Doctor Hooe: What do you anticipate the reaction of the members of the Conference will be?

Doctor West: Opposed to the HOLC scheme. They will be asked definitely to carry on.

Doctor Hooe: What do you think their carrying on will consist of?

Doctor West: I am going to ask that they get into contact with their congressmen to make them understand what is involved. Some of them are already doing that.

Doctor Hooe: You are going to try to get the Board of Trustees to agree that some definite campaign must be waged through Congress?

Doctor West: A campaign does not get you any place. It simply redoubles the effort of every agency opposed to you. I think that the Medical Society of the District of Columbia may not have put its position in the papers in Washington as clearly as it should have done. It should be very clearly stated in words everybody can understand that the interest of medicine in this thing is actually the interest of the public. The promotion of the HOLC scheme will actually tend to destroy the private practice of medicine and the people will pay the penalty.

Doctor Hooe: Can we say we have the backing of the American Medical Association in that?

Doctor West: You can say so very definitely, as that is absolutely in keeping with the policies of the organized medical profession in this country.

It was again urged that this matter be presented to the proper officials in Washington so that they take up the question of a corporation practicing medicine. Mention was again made of the desirability of contacting the proper government officials through physicians, who should, of course, know the facts and the argument to apply."

Gov. Ex. 136 is a portion of the proceedings of the board of trustees of the AMA for November 18 and 19, 1937.

"Group Health Association, Inc.: As has been previously explained, the federal Home Owners' Loan Corporation has granted $20,000 a year for two years to the Group Health Association, Inc., to aid it in getting started and to help provide the expensive modern equipment which will be used in the clinic. Thus, the federal government has provided funds to finance a corporation that is to engage in the practice of medicine, in spite of the fact that corporation practice has been declared to be illegal in numerous court decisions, including decisions handed down by federal courts.

Doctor West reported that a committee of the Medical Society of the District of Columbia had visited the headquarters office early in the month for the purpose of conferring with him, Doctor Woodward and Doctor Leland with respect to the Group Health Association, Inc.; that the committee brought what apparently amounted to a demand to the Association to devise further means and ways of opposing the continued operation of the Group Health Association, Inc., and that it was intimated that the American

Medical Association had not concerned itself with anything but scientific matters, in spite of the fact that he and Doctor Woodward had conferred with the District Society in Washington on instruction from the Board; that a write-up had appeared in The Journal concerning the matter; that diligent efforts had been made to develop information concerning the Group Health Association, Inc., and to procure a copy of its contract, and in spite of the fact that the headquarters office, on instruction of the Board of Trustees, had done everything it could to combat the movement on the basis of the fact that it is contrary to the policies of the House of Delegates.

In this connection, Doctor West presented a newspaper account of a meeting held at the Mayflower Hotel on October 30, 'to usher in the Group Health Association, Inc.,' which, it was stated, would open its clinic on the following day for members of the Federal Home Loan Bank Board and Affiliated Agencies. The newspaper contained a statement given out by Dr. Richard C. Cabot, lauding group Medical Practice and criticising the medical profession. This matter, he stated, was referred to the Judicial Council, which had requested him to contact Doctor Cabot to ascertain whether or not he was incorrectly quoted in the newspaper item. A letter has been written to Doctor Cabot but thus far no reply has been received.

Doctor Cullen moved that Doctor West be requested to explain the whole matter of the activities of the Group Health Association, Inc., before the Conference of Secretaries of Constituent State Medical Associations and Editors of State Medical Journals on Friday. Doctor Hayden seconded the motion and it was carried."

Gov. Ex. 137 is a photostatic copy of the minutes of the Judicial Council of the American Medical Association, November 12, 1937 (excerpt):

"Dr. Richard C. Cabot and the Group Health Association, Inc.: Several letters of complaint against Dr. Richard C. Cabot, Boston, Mass., were presented to the Council. These complaints had to do with Doctor Cabot's address under the auspices of the Home Loan Bank Board's new Group Health Association as reported in newspapers.

After consideration of the matter, it was moved by Doctor Burns, seconded and carried, that the Secretary of the

Judicial Council be requested to bring the matter to the attention of the Massachusetts Medical Society through its secretary and to write Doctor Cabot that, before the Judicial Council considers any action in the matter, it would like to know whether or not he said the things he is reported in newspapers to have said in his address at the meeting held under the auspices of the Home Loan Bank Board."

Gov. Ex. 119 is a letter from the defendant West to Dr. Joseph S. Wall, 1864 Wyoming Avenue, Washington, D. C., dated November 9, 1937:

"DEAR DOCTOR WALL:

I am sorry that I have not had opportunity until now to reply to one particular paragraph in your letter addressed to Doctor Woodward under date of November 1.

We have received several letters protesting against the utterances of Dr. Richard C. Cabot at the time of his participation in the meeting held at the Mayflower Hotel under the auspices of the Home Loan Bank Board and the Group Health Association, Inc. It is my purpose to submit all of these communications to the Judicial Council of the American Medical Association at its meeting to be held within a few days.

The diatribe delivered by Dr. Richard C. Cabot at the Mayflower Hotel was strictly in keeping with the record he has made during the last few years. Doctor Cabot does not, apparently, have as many opportunities as were formerly offered to him to deliver himself of his peculiar views. Doctor Cabot is a member and a Fellow of the American Medical Association and it is because of his Fellowship that I am in position to submit to the Judicial Council the several communications we have received. Original jurisdiction over his membership lies with the district medical society of the Massachusetts Medical Society of which he is a member.

We had a very pleasant visit from Doctors Hooe and McGovern and went over very fully the situation that has developed in Washington. As a matter of fact, official representatives of the American Medical Association have done all that they could to oppose the movement whereby a corporation financed by an agency of the federal govern-

ment has been put into the practice of medicine in Washington, and it is our purpose to continue these efforts.

With my sincere good wishes, I am,

Very truly yours, Olin West."

Gov. Ex. 156 is a letter from Joseph S. Wall to Dr. Olin West, dated November 11, 1937:

"DEAR DR. WEST:

I want to thank you very much for your letter of November 9th relating to the action of Dr. Richard C. Cabot in lending comfort to the enemy by a remarkable address he made in Washington.

I do trust the Judicial Council will take suitable disciplinary action in the premises as it would seem richly deserved.

The situation in Washington is now very acute and is fraught with most serious implications. Nearly all of our accredited hospitals have in force a ruling that members of the staff and courtesy staff must be in good standing as members of the American Medical Association and this rule has been repeatedly enforced since a legal ruling upholding the right of a hospital to exclude a physician was promulgated by the local Court in the case of Cox versus the Emergency Hospital.

Forty-eight hours ago, on the eve of a Community Chest drive, the threat was held over the head of the Chest officials that the Home Owners Loan Corporation would exercise its influence to prevent all contributions by Government employees unless the hospitals admitted their paid Hessian practitioners. I understand that at a meeting of the Hospital Superintendents with the Chest officials the sentiment seemed to be that the hospitals would admit the patients of Group Health Association but that the privilege of physicians in attendance would be governed by the Hospital rules.

We sincerely hope that the American Medical Association will uphold our hands in an effort to check this dangerous innovation under quasi-government auspices.

Again with thanks, believe me,

Sincerely yours, Joseph S. Wall, M.D."

Gov. Ex. 155 is a carbon copy of the defendant West's reply to Dr. Joseph S. Wall, dated November 16, 1937:

"DEAR DOCTOR WALL:

I am very glad indeed to have your letter of November 11. I fully agree, of course, with the views expressed in your letter with respect to the situation that has developed in Washington.

The American Medical Association has done everything that it could to oppose the institution of the plan that has been placed in operation under the auspices of a federal agency in Washington, its efforts having been initiated months ago. A report on this matter was submitted to the Board of Trustees at Atlantic City, and instructions issued by the Board of Trustees at that time have been carried out as fully as possible and will be persisted in until such time as the Board of Trustees or the House of Delegates of the American Medical Association may issue new instructions.

It seems perfectly apparent that the Group Health movement in Washington is receiving very powerful support, some of which, perhaps, has not yet come into the open.

With my sincere good wishes, I am,

Very truly yours, Olin West."

Gov. Ex. 37 was read from to the jury, as follows:

"Minutes of the Meeting of the Medical Society of the District of Columbia, Held November 10, 1937 (Excerpt)

Dr. Thomas E. Neill, President, presiding.

Present: Drs. Cake, Chipman, White, Speer, Ellison, Horgan, Williman, Dowling, Herbst, Neumann, Leffler, Minor, Mason, Brumbaugh, Trible, Murphy, Thompson, Schreiber and other members and guests to the number of about 90.

The Minutes of the preceding meeting of the Society, held November 3, 1937, were read and approved.

* * * * * * *

The Secretary read a communication that had been received from the National Homeopathic Hospital, as follows:

"November 9, 1937.

Dr. C. B. Conklin, Secretary, The Medical Society of the District of Columbia, Washington, D. C.

DEAR DR. CONKLIN:

As the attitude of the National Homeopathic Hospital towards the Group Health Association is apparently not clear to various members of the District Medical Society, I am enclosing a copy of a letter sent today to their president, Mr. Penniman, by Dr. J. B. Gregg Custis; Executive Officer of our Board of Trustees.

Very truly yours, Frances Whitlock Hall, Superindent."

(Enclosure):

"November 9, 1937.

Mr. William F. Penniman, Group Health Association, Inc., 1328 Eye Street, N. W., Washington, D. C.

MY DEAR MR. PENNIMAN:

At a Board of Trustees meeting held on November 4, 1937, it was voted that until the Group Health Association, Inc., was approved by the Medical Society of the District of Columbia, the National Homeopathic Hospital could not make any contract or enter into any agreement with it.

Very truly yours, J. B. Gregg Custis, M.D., Executive Officer, Board of Trustees."

Gov. Ex. 37 was read from to the jury as follows:

"Minutes of Special Meeting of the District Medical Society, November 11, 1937 (Excerpt)

Dr. Thomas E. Neill, President, Presiding.

Present: Drs. Gannon, Warner, Mallory, John Reed, Sterling Ruffin, Schreiber, Cajigas, Cake, Mundell, Cummings, Thomas A. Groover, Marbury, Reichelderfer, Wall, Leech, Smith, Parker, Hyde, Thomas, and other members to the number of about 300.

Dr. Neill announced that the meeting was called to hear a report from the committee of two which was sent to Chicago to confer with representatives of the American Medical Association regarding the problem confronting the

local profession, viz., the Group Health Association, Inc. He called on Dr. R. Arthur Hooe.

Dr. R. Arthur Hooe said he would make his remarks as brief as possible during which he would deal more or less in generalities. His remarks would be followed by a report from Dr. F. X. McGovern. Dr. Hooe stated: 'You would naturally want to know something of the trip which we made to Chicago. We arrived in Chicago on Saturday morning at 9 o'clock. About 5 minutes before 10 we arrived at the American Medical Association headquarters on North Dearborn Street, where we received a very, very cordial welcome at the hands of Drs. Olin West, W. C. Woodward and R. G. Leland. Our conference very promptly began at 10 a. m. and lasted for three hours, at the end of which the other two gentlemen seemed to be in a hurry—Dr. Woodward in some hurry to catch the afternoon train for Washington, Dr. Leland being in a hurry—Dr. West took us in charge to the University Club where he lunched us. We had a delightful visit with them. At the conclusion of the luncheon a taxi was furnished to take me to the Pennsylvania Station and a taxi furnished to take Dr. McGovern to the New York Central from which he left for New York.

'Early in the conference it was quite apparent, very promptly developed, that we were dealing with a problem in common, in which the American Medical Association and we were the victims—we of the states, particularly we of Washington, and perhaps no less those of Denver, Colorado. This being true, the conference throughout was entirely advisory in character, in no way whatsoever controversial. We were early assured by these gentlemen that not only do they view but they have always viewed it as a National problem. They furthermore assured us that they heartily endorsed the attitude of the Medical Society of the District of Columbia and hoped and expected to endorse its future policies in regard to this matter, assuming, of course, that that course will be wisely and carefully mapped out. They recognized the fact that the Medical Society of the District of Columbia constituted the guinea-pig inoculation in this case. We have their sympathy and we have their assurance of their cooperation whenever and wherever possible. Discussing ways and means and the best ways and means by which the problem can be approached, they themselves have recognized the seriousness of this thing. They feel long before we did and they have been very diligent in their

efforts to combat it. Many things have been done by these gentlemen which have never been brought to our attention and as in all organizations—in our own many times, obviously confidential. Be assured that they have left no stone unturned nor will they in the future. They gave us very sincere advice in the matter and you will later have the pleasure of being addressed by Dr. Woodward and I hope Dr. Woodward and Dr. McGovern may cover anything I may inadvertently omit. They feel the Medical Society of the District of Columbia, if possible, at this time should not play the role of the complainant in the case, if that can be avoided. They feel, however, that unless some other profession, such as the District Bar Association—and we are advised that that is being attacked as well, or some other institution or individual, will not complain that we then, in that case, they advised that after reasonable time and with most careful legal guidance that we proceed if no one else will and show the Corporation Counsel and the District Attorney wherein this practice is illegal according to the Medical Practice Act and the Insurance Laws and if they refuse to act, complain to the Commissioners.

They feel also, I believe, it is our conclusion—it is our feeling, that they feel from what they said to us, the many things that were read—that the best way to attack this problem is through the powers that be, the powers higher up. They realize that we have no suffrage in Washington and they realize that it constitutes a great problem because of that fact. They feel that the Senators and Congressmen, as we do, should be approached by the voters back home. We, who have no vote, may have little say—receive promises and little action.

On the 18th of this month the Board of Trustees of the American Medical Association will meet in Chicago, at which time we have assurance that this issue will be the one foremost to be considered by that group. We feel also that the expression of these three gentlemen to us is but a reflection of what that committee, that Board of Trustees, will do or suggest. It is known to them that two of our members, namely, Drs. C. B. Conklin and W. M. Yater, will be in Chicago upon that occasion. They look forward to their coming. The floor will be free to them and it is hoped by them and by us that these gentlemen will speak as freely as we tried to do. It is also hoped that these gentlemen

will be able to bring us back or we will soon obtain some report as to those deliberations and their decision.

I have stressed or have tried to stress the fact, ladies and gentlemen, that we feel they feel that we could accomplish more if by some means we can reach through the proper channel the powers that be on capitol hill. There were many things said about it and it constitutes quite a problem. They are hoping that the Medical Society, as said before, will proceed after due careful deliberation, proceed wisely, in the matter, and they hope that it will be able to accomplish something along these lines.

They have stressed the fact that whatever plan may be arrived at by you, by which to accomplish this or to make the effort, the average doctor who is asked to contact a representative or senator should be coached carefully. In order that he may have well in mind the subject matter of that interview in order that he may be prepared to debate it with that gentleman and throw light upon it, at least that gentleman has to have a way of doing some things, taking him over, it is a very very important point.

In conclusion, I personally hope that by some means the Medical Society of the District of Columbia will find some way by which its members may be coached and may be able to contact as many of these men in Washington as possible for the good that may come of it. But more important than that, it would seem that the State Societies should be contacted as early as possible and those men reached through the states if it is possible to do that. Finally, in that same connection, it seems to me, as we all sit here and discuss our problems, and often never seem to get anywhere, I wondered myself if that cannot best be done by the means of some committee by its subcommittees to get together and iron out the problems.

I will now retire and hear Dr. McGovern tell more specifically of the conference, at the close of which I will close with a few words; if not, we will then have the pleasure of hearing Dr. Woodward."

Dr. F. X. McGovern was recognized. He said that in view of the fact that there may be some members present who were not in attendance at the last business meeting, he would read, for their information, the resolutions which were adopted, authorizing the sending to Chicago of two

members of the Society, and another resolution that had directly to do with the American Medical Association.

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Dr. McGovern said he would read some questions and answers that were involved in the conference in Chicago, in order that the membership may be apprised of the proper reactions, thereby being able to deduce their own conclusions. (Questions and answers read by Dr. McGovern appended hereto.)

The questions and answers read by Dr. McGovern are appended thereto. And of course I will omit those. They have already been read by my colleague.

(Reading:) "Dr. Woodward"——

Mr. Leahy. Wasn't there one you omitted there? You omitted the questions and answers, but there was one you omitted: "Dr. McGovern then read a statement of his own personal conclusions"?

Mr. Lewin. I will read that.

"Dr. McGovern then read a statement of his own personal conclusions. He emphasized the fact that the American Medical Association is very definitely and strongly of the opinion that the Group Health Association, Inc.——

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Dr. W. C. Woodward, in addressing the Society, said he felt very much at home in this Society, although he noted a lot of new faces. He said that Drs. Hooe and McGovern had stated the situation very clearly in so far as it relates to the American Medical Association. He stated that the problem is not a local problem. According to the articles of incorporation of the Group Health Association membership in the organization is not limited to members of the Home Owners' Loan Corporation and its affiliates, and is not limited to employees of the Federal Government in the District of Columbia. Every employee of the Federal Government, anywhere, except commissioned officers of the Army and Navy, and enlisted men in the

Army and Navy are eligible for the benefits of the organization, such as they are. The fact that at the present time the activities of the organization are limited to the District of Columbia is the result, he thought, of the failure of the organization to enroll enough men outside or to procure enough money to carry on outside of the Home Owners' Loan Corporation in order to put the program over. He stated that we all recognize it as a national organization and that at the present time it is centered in the District of Columbia. He felt there was one thing that the members of the Medical Society ought to bear in mind and that is that the organization that they have to fight is not the Home Owners' Loan Corporation—it is Group Health Association, Inc., which is merely a private corporation. If the five men who have organized Group Health Association have the right to organize and hire doctors and to sell the services of those doctors, whether for profit or not, any five men or women in the District of Columbia can do the same thing, retaining all the time control over the activities of the employees. He hoped the members realized that that is an intolerable situation. The courts have so regarded it—it has been held that a corporation cannot practice medicine even though every employee of the corporation is a licensed practitioner.

Dr. Woodward said the question has arisen with respect to practice of corporations. He cited one case in which an individual undertook to hire a doctor, the individual pocketing the profits. The court in that particular case ruled that unless the individual financial backer was a licensed practitioner he could not practice medicine in that way. The number of decision to the contrary have been negligible. He recalled two decisions by the Supreme Court of one state in what amounted to the same case to the contrary—Nebraska. Decisions everywhere else have held that a corporation cannot practice medicine as the Group Health Association is practicing medicine. If they do it is a criminal offense. Anybody can prefer charges if they are willing to swear out a warrant. Any organization, such as the Society, hires its own prosecutor. It pays the man to proceed for them. It swears him in. Today, Dr. Woodward added, the Society has as its servants the United States District Attorney for the District of Columbia and the Corporation Counsel for the District of Columbia. If

the Society lays before them the evidence that these persons are violating the law they have no lawful option but to prosecute. That, of course, relates to the practice of medicine. As he recalled the Healing Arts Practice Act he believed it was the duty of the Superintendent of Police to get evidence with view to prosecution.

Dr. Woodward said there was another approach to this question—that the organization is conducting an insurance business unlawfully, and in that case it is the business of the insurance commissioners to gather the information and prosecute. In both cases, both as to the unlawful practice of medicine by a corporation and with respect to the corporation engaged in insurance business, Dr. Woodward said these questions had come before the corporation counsel and he has decided in the case of insurance that such a corporation cannot engage in that business and he has come to practically the same conclusion when it comes to the practice of medicine. The United States District Attorney has ruled that a corporation cannot practice any profession that requires a license to permit one lawfully to engage in such practice. Dr. Woodward stated that those approaches are open. Other approaches that are not nearly so open are available, i. e., quo warranto proceedings, which are a bit more difficult because the authority of some officer in the District of Columbia who corresponds to the Attorney General of the state must be obtained to institute proceedings. Further, to recover from the Group Health Association money that has been granted it by the Federal Home Loan Bank Board—if that money has been unlawfully paid—a suit to recover must be at the instance of some government official.

When it comes to the check-off system, Dr. Woodward stated, which again is contrary to public policy, while not a penal offense, any effort to continue would be something that would require action by some government officer, not by a private official. He said that it has been frankly admitted that the Federal Home Loan Bank Board has granted, or committed itself by giving this organization $20,000 a year for two years. That, he said, is 'your money and mine.' If the Board can give to a private corporation of this character he thought we could look for some authority for the gift. It is alleged that there has been undue amount of sickness among employees of the Home Owners' Loan Cor-

poration and that this grant is to reduce the amount of sickness, but if there is any undue amount of sickness no evidence has been furnished. Certainly men in the organization, many of them, are able to pay and they should not find it necessary to grant $20,000 a year to operate a corporation. These men, earning from $4,000 to $8,000 a year are enabled to get from this organization medical services at $2.20 for a single person, $3.30 for man and his family. It should be recognized that these services could not be granted without a subsidy. It is admitted that the organization has been granted $20,000; how much more no one knows, Dr. Woodward said. He added that it had been stated to be $100,000. No one can say that is true or not true, but he had never seen it denied.

Dr. Woodward said further that the contract that was made between the Home Owners' Loan Corporation and the Group Health Association is a profound secret. 'One way to subsidize and operate a corporation is to hire it to render certain services. What those services are no one knows. I was told that the medical director of the Group Health Association was to be made superintendent of what he termed the Emergency Rooms of the Home Owners' Loan Corporation throughout the entire United States. There are in those offices, emergency rooms, retiring rooms that have nurses and they are to take their orders from the medical director of the private corporation. What corporation was not stated. The contract is still a profound secret and very definite and positive efforts have been made by men of influence to obtain a copy. No one has been able to see it.'

Dr. Woodward, continuing, stated that the Society has before it what is clearly a legal problem. A group of men such as the Society, not familiar with methods of law, is hardly in a position to handle the problem itself. He was of the opinion that it would wear them out. He felt that the Society must have competent counsel that will guide the matter for it; counsel in which the Society has confidence, in order that the members may go about their practice confident that their interests are being taken care of. He said Mr. Fenning could advise the Society with respect to counsel. He felt it was important that the best legal counsel be obtained. He added that the American Medical Association would cooperate in every way.

In conclusion, Dr. Woodward said that the plan outlined of laying the evidence before the Corporation Counsel and District Attorney, showing them it is their duty to act, to counsel them to act and if they will not act, appeal to Congress, is the only course. 'My own judgment is that with the law as clear as it is you will have no difficulty in having proceedings instituted for the unlawful practice of medicine by a corporation, and engaged in the business of insurance without having properly qualified.'

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Dr. J. Ogle Warfield, Jr., Chairman of the Hospital Committee, was recognized. He submitted the following report, pursuant to resolution which was adopted by the Society on the evening of November 3:

'In view of the Resolution adopted by the Medical Society of the District of Columbia on the evening of November 3, 1937, the Hospital Committee held a meeting, at my office, on the evening of November 9, 1937, and recommends that the Medical Society of the District of Columbia send the following resolution to the Medical Boards of the various local hospitals for interpretation to the Boards of Directors of those hospitals:

That the hospitals accept patients from Group Health Association, Inc., provided that Group Health Association, Inc., is responsible for their financial obligations;

That these patients only be treated by the attending, associate, assistant and courtesy staff physicians of the respective local hospitals.

J. Ogle Warfield, Jr., Chairman, Hospital Committee.'

Motion was made and seconded that the recommendation contained in the report of the Hospital Committee be adopted.

Dr. Worth B. Daniels, in the discussion, said he was of the opinion that members of the local medical staffs of hospitals were required to be members of the Medical Society of the District of Columbia. He would inquire if any members of the staff of Group Health Association were now members of the Society.

The Chair stated that two members on the staff of Group Health Association at the present time are members and

they have tendered their resignation from the Society. Another member of the staff had applied for membership in the Society but withdrew his application. The two aforementioned members are still members of the Society and are on the courtesy staff of hospitals at the present time.

Dr. Yater was of the opinion that the hospitals should be contacted and assurance should be given that no member would be allowed to practice there if he is a member of the staff of Group Health Association.

Dr. E. J. Gunning would inquire how many members are on the courtesy staff of the various hospitals.

Dr. Yater made a motion to the effect that the recommendation of the Hospital Committee be recommitted to the committee on the grounds that there seems to be no assurance that members of the staff of Group Health Association are not already and might not become members of the staffs of the local hospitals. Seconded and finally adopted.

Discussion was participated in by Drs. John H. Trinder, H. S. Berton, Claude Moore, Charles P. Cake, E. M. Pickford, John D. Thomas.

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Dr. Thomas E. Mattingly called attention to the fact that each member of the Society had been supplied with a reprint from the October 2, 1937, issue of the Journal of the A. M. A., outlining in detail the situation concerning Group Health Association. He said he thought all the members had to do was to read this reprint to get all the information needed."

Mr. Leahy: Now, would you read the bottom of page 11?
Mr. Lewin: Yes. Dr. Woodward or Dr. Willson?
Mr. Leahy: Dr. Woodward.
Mr. Lewin (reading):

"Dr. W. C. Woodward was called upon. He pointed out that the Society voted to employ counsel to look after the interests of the Society. He advised strongly that no further steps be taken until the Society has the advice of that counsel. He felt sure Mr. Fenning would agree with him when he expresses the opinion that it is not desirable to try a case in the newspaper. He said the Society should be guided by the wishes of counsel even if the resolutions are delayed."

Mr. Leahy: Was there something——

Mr. Richardson: Yes. On the preceding page will you read the part about Dr. Willson?

Mr. Lewin: All right (reading):

"Dr. Prentiss Willson was recognized. He pointed out that the Community Chest is now campaigning for funds for the various hospitals, and institutions for the year 1938. He thought the occasion was right for a formal and very carefully thought out statement to be published in the press. He called attention to the fact that there is undoubtedly a concerted movement in the Agriculture Department and by other employees of the government interested in this insurance plan to hold a club over the Community Chest in its present drive, to the extent that they will not contribute to the Chest unless the hospitals agree to admit patients from the Group Health Association for treatment. In some ways that would seem to be a very serious situation. He thought that possibly a committee could be appointed to draft a statement for publication. He did not think it was necessary to insert it in the press as a paid advertisement; if it was he thought it would be well worth the money involved.

The Chair said he had been contacted by several members in the different departments of the government, also."

Mr. Lewin: Anything further?

Mr. Richardson: Follow that on through.

Mr. Lewin: All right (reading):

"Dr. R. Arthur Hooe would call attention to remarks made earlier in the evening—that if possible the Medical Society should not appear as complainant. He wondered if it might not be unwise for the Society as such to proceed in this manner.

Dr. Willson was asked to put his remarks in the form of a motion so that the Society could act upon them.

Dr. Willson said he jotted down some notes in the last few minutes; after observing from the remarks of the delegates, that it was strongly suggested that this Society should make a statement. He felt the attitude of the Society had not been carefully put before the public. He made the following motion:

That a committee be appointed to draft a statement for publication by the Medical Society covering the following points:

1. That the Society is not opposed to any proper method for increasing the amount, bettering the quality or lessening the cost of medical and hospital care for persons in the lower-income groups.

2. It is opposed, however, to schemes of doubtful legality that, while making no provision for adequate care for the indigent, are able to offer their benefits to those amply able to pay proper fees for the same only because the less privileged are made to carry their share of the cost through the discredited tontine system of insurance.

3. It is also unequivocally opposed to any scheme denying the patient the right to the services of the physician of his choice.

4. With respect to the reported activity of some who are interested in a local scheme of medical and hospital insurance in attempting to coerce the Community Chest by threatening to withhold contributions to it unless the hospital beneficiaries of the Chest open their doors to the patients of physicians employed by it, who attempt to practice with dubious ethical and legal status, the Medical Society points out that the sum contributed annually by the local profession in services to the indigent, even when valued at the most minimum fees, amounts to more than the annual monetary contribution of all other charitably disposed persons in the community, a contribution, however, to which they also give their proportionate share in cash.

5. The Society is willing that this record be contrasted by the public with that of Group Health Association, Inc., in attempting to jeopardize the Community Chest Drive to attain its own objectives.

6. It asks that the public withhold judgment until such time as its present investigations, undertaken before Group Health Association, Inc., was even contemplated, may reach a point where it feels justified in offering its own solution of these problems, of which it is acutely aware, for the consideration of the public.

Dr. Willson made a motion that the foregoing motion be referred to the Committee on Public Information for consideration in relation with the Public Relations Counsel. Seconded.

Dr. Willson withdrew his motion and resolutions."

Gov. Ex. 37 was read from to the jury as follows:

"Minutes of the Meeting of the District Medical Society November 17, 1937 (Excerpt).

Dr. Thomas E. Neill, President, presiding.

Present: Drs. A. L. Stavely, John B. Nichols, Frank Leech, Lyle M. Mason, John Minor, R. Lomax Wells, Thomas E. Mattingly, A. P. Tibbets, H. R. Schreiber, A. B. Bennett, Thomas A. Groover, James T. Wolfe, William C. Gwynn, James G. Gumming, Charles S. White, Tomas Cajigas, C. N. Chipman, F. X. McGovern, Joseph Horgan, Virgil B. Jackson, W. M. Sprigg, and other members to the number of about 150.

The Chair announced that he appointed the following attorneys to consult with the Society's Attorney, in accordance with resolution adopted at the meeting of the Society on November 11, pertaining to Group Health Association, Inc.: George P. Hoover, William E. Leahy."

The following exhibits were read to jury:

Gov. Ex. 65 is a copy of a letter from M. Scandiffio to Dr. C. B. Conklin, dated October 29, 1931:

"Dear Doctor:

I hereby tender my resignation as a member of the Medical Society of the District of Columbia.

This is to take place immediately.

Very truly yours, (Signed) M. Scandiffio.

Letter received in the Society's Office on October 30, 1937."

Gov. Ex. 41 is a letter from Allen E. Lee to Dr. C. B. Conklin, dated October 30, 1937:

"Dear Doctor Conklin:

I hereby submit and tender my resignation as a member of the medical society, to take effect at once.

Respectfully, Allen E. Lee."

Gov. Ex. 39 is a letter from the defendant Hooe to Dr. Allen E. Lee, dated November 2, 1937:

"Dear Doctor Lee:

You are hereby directed to appear before the Compensation, Contract and Industrial Medicine Committee, which

will be in session on Thursday evening, November 4, 1937, at 8 P. M., in the Medical Society Building, 1718 M Street, N. W.

Very truly yours, R. Arthur Hooe."

Mr. Kelleher: Gov. Ex. 62 is a letter from defendant Hooe to Dr. Mario Scandiffio, identical with Gov. Ex. 39. I believe it is understood that I may state that on November 4, 1937, Dr. Lee replied to Dr. Hooe's letter stating that he had already resigned from the Society.

Gov. Ex. 43 is a letter from Allen E. Lee to Dr. Thomas E. Neill, President, District Medical Society, dated November 11, 1937:

"My Dear Doctor Neill:

On October 30th, 1937, I tendered my resignation as a member of the District Medical Society. I did so with considerable reluctance and only because of my desire to maintain my professional dignity since I had received, from unofficial sources, information which led me to believe that unfavorable action would be taken against me by the Society because of my affiliation with the Group Health Association, Inc.

My acceptance of the opportunity to identify myself with this organization was made only after the most careful consideration on my part.

I have been reliably informed that no action has been taken on my resignation. Relying upon the broadminded and well considered judgment of the officers and members of the District Medical Society, I now wish to withdraw my resignation and trust that my membership in the Society will be continued.

With very sincere regards, I am,

Yours very truly, Allen E. Lee, M. D."

Gov. Ex. 64 is a letter from Scandiffio to Dr. Neill, dated Nov. 11, 1937, and is identical with Gov. Ex. 43.

Gov. Ex. 42 is a letter from Dr. Neill to Dr. Allan E. Lee, dated November 18, 1937:

"Dear Doctor Lee:

I acknowledge your letter of November 11th, in which you state you desire to withdraw your resignation, tendered

by you on October 30, 1937, as a member of the District of Columbia Medical Society.

Inasmuch as your resignation has not been acted upon by the Society, I am returning it to you. In doing so I wish you to understand that my action in returning the resignation to you, unacted upon, is in no wise to be considered as passing upon the motives which actuated you in tendering your resignation, as stated by you, or its withdrawal or your continuance as a member of the Society.

Very truly yours, Thomas E. Neill."

Gov. Ex. 63 is a letter from Neill to Scandiffio dated Nov. 18, 1937, and is identical with Gov. Ex. 42.

Gov. Ex. 44 is a letter from the defendant Hooe to the Executive Committee of the District Medical Society, dated November 22, 1937, in which the following letter, dated November 10 to Drs. Lee and Scandiffio, was quoted, the letter continues as follows:

"Under date of November 2, 1937, and by registered mail, you were directed to appear before the Compensation, Contract and Industrial Medicine Committee of the Medical Society of the District of Columbia, Medical Society Building, 1718 M Street, N. W., at 8 P. M., November 4, 1937. You failed to appear. The committee now, therefore, charges you of having violated Chapter IX, Article III, Sections 1 and 2 of the Constitution of the Society, reading as follows:

'1. It is unprofessional for a physician to dispose of his services under conditions that make it impossible to render adequate service to his patient or which interfere with reasonable competition among the physicians of a community. To do this is detrimental to the public and to the individual physician, and lowers the dignity of the profession.

No member of the Society shall enter into a written, verbal, or implied contract or agreement of employment with any person, firm, corporation, association, club, lodge, or other similar organization, including the Federal and or District Government, the terms of which contract or agreement are in violation of the principles herein expressed. The customary professional relationship of a physician to his patients, upon the basis of individual fees for services rendered, shall not be regarded as a contract within the meaning of this section.

'2. Every member of the Society before entering into a contract or agreement for rendering professional services shall submit a copy of his contract, if written, or a true declaration of the terms of the agreement, in writing, to the Committee on Compensation, Contract and Industrial Medicine for approval. In the event that the committee disapproves the contract, a member may appeal to the Executive Committee.'

And again, Chapter IX, Article IV, Section 5, of the Constitution of the Society, reading as follows:

'No member of the Society shall engage in any professional capacity whatsoever with any organization, group or individual, by whatever name called or however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, which has not been approved by the Society.'

* * * * * * *

Should you desire to defend in this matter and will so advise within 10 days, a hearing by the Committee will be arranged.

Very truly yours, R. Arthur Hooe, M. D., Chairman, C. C. & I. M. Committee."

Gov. Ex. 56 is Dr. Allan E. Lee's reply to Dr. R. Arthur Hooe, dated November 19, 1937:

"Dear Doctor Hooe:

In response to your letter of the 10th instant, wherein I have been charged by your Committee with having violated the provisions of Sections 1 and 2 of Article III of Chapter IX and Section 5 of Article IV of Chapter IX of the Constitution of the Society, you are advised as follows:

1. Your letter or notice of November 4, 1937, was disregarded because of the fact that, prior to that date, I had sent to the Society my resignation from membership; consequently I considered further response unnecessary.

2. Since that time, however, I have withdrawn my said resignation, and, considering myself in good standing in the Society, I have intended and do intend to comply fully with the rules of the body. No formal contract has been entered into with the Group Health Association, but when the terms

of the contract are finally agreed upon and reduced to writing, I fully intend to submit same for approval under the rules of Medical Society.

While it is not my thought that I have, either in letter or spirit, violated any of the rules of the Society, and believing that charges thereof are premature, I hereby request a full and complete hearing, in accordance with your letter of November 10th, on the charges made, to the end that I may have ample opportunity, in person and by counsel, to defend against all charges so made. It is my request that said hearing be fixed at a date not earlier than fifteen (15) days hence in order that ample opportunity may be had for a full and complete presentation of the matter.

Respectfully, Allen E. Lee, M. D."

Gov. Ex. 67 is a letter from Dr. Scandiffio to Dr. Hooe, and is identical with Gov. Ex. 56, and dated November 19, 1937.

Gov. Ex. 55 is defendant Hooe's reply to the letter of Dr. Allan E. Lee, Gov. Ex. 56, and is dated November 22, 1937:

"DEAR DR. LEE:

In acknowledgment of your letter of November 19, 1937, may I say that a report, in the entire matter, is being forwarded to the Executive Committee. Further reply to your communication will doubtless follow within a few days from the chairman of that body.

Very truly yours, R. Arthur Hooe, M.D., Chairman, C. C. & I. M. Committee."

Gov. Ex. 68 is a letter from Dr. Hooe to Dr. Scandiffio, in reply to Dr. Scandiffio's letter of November 19, 1937, and is identical to Gox. Ex. 55.

Gov. Ex. 44, a letter from Dr. Hooe to the Executive Committee of the Medical Society, dated November 22, 1937, was read from (last paragraph) to the jury as follows:

"After careful consideration the committee is unanimously of the opinion that these members are guilty of violation of Section 1, Article III, Chapter IX, and Section 5, Article IV, Chapter IX, of the Constitution of the Medical Society of the District of Columbia, and recommends that they be expelled.

Very truly yours, R. Arthur Hooe, Chairman, C. C. & I. M. Committee."

Gov. Ex. 57 is a copy of a letter from William Mercer Sprigg to Dr. Allan E. Lee, dated November 24, 1937:

"DEAR DOCTOR LEE:

In reply to your letter of November 19, 1937, requesting a time for hearing 'not earlier than 15 days after the above date,' I am informing you that December 6, 1937, at 8 P. M., is the date and hour fixed when we will expect you to appear before the Executive Committee of the Medical Society of the District of Columbia for hearing, at the Medical Society Building, 1718 M Street, N. W. You, of course, know that you are entitled to be represented by counsel.

Very truly yours,"

Gov. Ex. 69 is a letter from Dr. Sprigg to Dr. Scandiffio, dated November 24, 1937, and is identical with Gov. Ex. 57.

Gov. Ex. 58 is a letter from Allan E. Lee to R. Arthur Hooe, dated December 3, 1937:

"DEAR DR. HOOE:

Enclosed herewith is * * * a written agreement to be executed hereafter by and between myself and Group Health Association, Incorporated, of Washington, D. C. The original contract has not been executed by the parties thereto.

I am forwarding a copy of said proposed contract in accordance with the constitution and by-laws of the Medical Society of the District of Columbia, to you as Chairman of the Committee on Compensation, Contract and Industrial Medicine, for the consideration and approval of said proposed contract by said Committee. Please submit the proposed contract to said Committee and notify me when the approval of said Committee thereto is had and obtained.

I am informed by the Group Health Association that it will be only too glad to submit to your Committee any information which your Committee might feel necessary in consideration of said contract, explaining the purpose, objects and accomplishments of said Association.

Very truly yours, Allan E. Lee."

Gov. Ex. 70 is a letter from Scandiffio to Dr. Hooe, dated December 3, 1937, and is identical with Gov. Ex. 58.

Gov. Ex. 37 was read from to the jury as follows:

"Minutes of the Business Meeting of the District Medical Society of December 1, 1937. (Excerpt)

Dr. Daniel B. Moffett, First Vice President, presiding.

Present: Drs. Gwynn,—that's Henry Gwynn, William Gwynn, Rench, Trinder, Jacobs, Nichols, Cumming, Seckinger, Mason, Stavely, Kittredge, Geier, Gilbert, McGovern, Wells, and other members to the number of about 75.

The minutes of meetings held November 17 and 24th were read and approved.

Dr. J. Ogle Warfield, Jr., Chairman of the Hospital Committee, stated that his committee studied the local question with advice of legal counsel, but as yet was not ready to make a final report. He submitted the following resolution as a recommendation from his committee:

RESOLVED, That as a matter of educational policy the Medical Society of the District of Columbia strongly recommends that all hospitals engaged in the teaching and training of residents, interns, and nurses, where possible, follow the recommendation of the American Medical Association regarding the constitution of their entire Medical Staffs, namely, that each appointee be a member of the Medical Society of the District of Columbia or a local Medical Society in his immediate neighborhood and a member of the American Medical Association.

Dr. Warfield made a motion that the resolution be adopted and that a copy be sent to each of the local hospitals. Seconded and adopted.

The Secretary would inquire whether the Hospital Committee was ready to report on hospitals approved, in accordance with the Constitution of the Society.

Dr. Warfield said that the Hospital Committee realized they should report and revise the hospital list, but that all the members of the committee as well as Mr. Fenning, the Society's Legal Counsel, felt it was wise to postpone that report."

"Minutes of the Adjourned Special Meeting of the Executive Committee of the District Medical Society, December 10, 1937.

Dr. Sprigg, Chairman, presiding.

Present: Drs. Borden, Breeding, Chipman, Fowler, Holden, Hooe, Macatee, McGovern, John Reed, Hiram Reede,

Ruffin, Schreiber, Wells, and Conklin. (By invitation: Dr. Margaret M. Nicholson.)

Announcement was made by Dr. R. Arthur Hooe, Chairman of the Compensation, Contract and Industrial Medicine Committee, that Dr. Allan E. Lee submitted his resignation on December 10, to take effect immediately, as a member of the staff of Group Health Association, Incorporated. This letter was read. Acting upon the submission of this letter the Compensation, Contract and Industrial Medicine Committee drew up the following for presentation to the Executive Committee, which was read by Dr. Margaret M. Nicholson:

'December 10, 1937.

The Executive Committee.

On November 22nd, 1937, our committee addressed a communication to you advising you of our investigation concerning Drs. Allan E. Lee and M. Scandiffio, and recommended that they be expelled as members of the Society because of their violation of Section 1, Article III, Chapter 9, and Section 5, Article IV, Chapter 9, of the Constitution of the Medical Society of the District of Columbia.

Our committee is today in receipt of a letter from Dr. Allan E. Lee, advising us that he has resigned from the staff of Group Health Association. Inasmuch as our recommendation respecting Dr. Lee was based upon the fact that he had entered into a contract with Group Health Association and that contract has now been terminated by him, we feel that no further action should be taken with respect to Dr. Lee.

We therefore, respectfully request that the charges and recommendations against Dr. Lee, embodied in our communication of November 22, 1937, be withdrawn and that appropriate action be taken by your committee thereon.

R. Arthur Hooe, Chairman.'

When it was ascertained definitely that Dr. Allan E. Lee was in fact no longer a member of the Group Health Association Staff, Dr. F. X. McGovern, for the Executive, moved that all charges that had been filed by the Compensation, Contract and Industrial Medicine Committee be dropped forthwith. This was duly seconded and adopted.

Mr. George P. Hoover, Attorney, interposed that Dr. Hooe's committee address a letter to Dr. Lee, stating in

effect that his resignation would end the prosecution in so far as his committee is concerned.

Dr. W. M. Sprigg stated that inasmuch as Dr. E. Hiram Reede had already presided at the previous meeting, he was of the opinion that Dr. Reede should continue. This arrangement was agreed to.

Dr. E. Hiram Reede, Vice Chairman, now presiding.

At this point Dr. Mario Scandiffio and the attorneys for the Group Health Association, Inc., and Mr. W. F. Penniman, filed into the room. The stenographer retained by Mr. Hoover and the attorneys for the Society then proceeded to take down verbatim the proceedings.

(Signed) C. B. Conklin, Secretary."

Gov. Ex. 59 is a letter from Allan Lee to Dr. R. Arthur Hooe, dated December 10, 1937:

"DEAR DOCTOR HOOE:

Enclosed please find a copy of a letter of resignation from the staff of Group Health Clinic, as you requested. You will please inform the members of the committee of my course of action as you have outlined.

Sincerely, Allan Lee, M. D."

Gov. Ex. 60 is a letter from Dr. Lee to Dr. E. Brown, Medical Director, Group Health, dated December 10, 1937:

"MY DEAR DOCTOR BROWN:

Upon reconsideration of all the facts involved, I am forced to resign as a member of your staff of the clinic.

Sincerely, Allan E. Lee, M. D."

Gov. Ex. 47 is a letter from Dr. Hooe to the Executive Committee dated December 10, 1937, advising that Dr. Lee had resigned from Group Health and requesting the withdrawal of the charges against him. (This was read from the minutes, Gov. Ex. 37.)

Gov. Ex. 61 is a letter from the defendant Hooe to Dr. Allan E. Lee, dated December 21, 1937:

"DEAR DOCTOR LEE:

In acknowledgement of your letter of December 10, in which you enclose a copy of your resignation as a member of the medical staff of Group Health Association, Inc., may I say that upon receipt of same the Compensation,

Contract and Industrial Medicine Committee appeared before the Executive Committee and requested a withdrawal of its charges against you, which request was granted. Such action places your status as that of a member now in good standing.

Very truly yours,"

Gov. Ex. 120 is a copy of a letter from the defendant Olin West to Dr. Walter D. Wise, Secretary of the Medical and Chirurgical Faculty of the State of Maryland, Baltimore, Maryland, dated November 16, 1937:

"DEAR DOCTOR WISE:

While I am delighted to have your letter of November 12, I am sorry indeed that you will not be with us at the Annual Conference of Secretaries of Constituent State Medical Associations. I think that some of the matters that will be discussed at the Conference are of tremendous importance and, in some particulars, are probably more important than any other matters that have ever been considered at similar meetings.

We have done all that we could to oppose the Group Health Association, Inc., in Washington, but in spite of our best efforts the scheme has gone into operation. We have worked as closely as possible with the Medical Society of the District of Columbia. As a matter of fact, our efforts began before the Medical Society of the District of Columbia became very active. It is my purely personal opinion that it is an outrage that an agency of the Federal Government should finance a corporation that is to engage in the practice of medicine in the face of the fact that the laws of most of the states specifically declare corporate practice of medicine to be illegal.

I respectfully suggest that the Medical and Chirurgical Faculty of the State of Maryland make proper representations to the members of Congress from Maryland with respect to this matter.

With my sincere good wishes, I am,

Very truly yours, Olin West."

Gov. Ex. 158 is a letter from Dr. Poling to Dr. Olin West, Secretary of the AMA, dated November 24, 1937:

"MY DEAR DR. WEST:

The Mahoning County Medical Society received a communication relative to the Clinic in Washington, D. C.,

financed and equipped by money from the United States Government (HOLC).

Action was taken by the Council of this society at its meeting of November 22, 1937. This problem was turned over to the chairman of the Legislative Committee and Allied Professions for action. They are authorized to send resolutions to various influential men relative to this situation, asking for their cooperation. Council sent a letter of confidence to Dr. Thomas E. Neill, President of the District Medical Society.

Therefore, the Council of the Mahoning County Medical Society is hereby informing you of its action on this timely matter.

With kind regards, I remain,

Yours fraternally, R. B. Poling, Secretary."

Gov. Ex. 157 is a letter from the defendant Olin West to Dr. Poling, dated December 1, 1937:

"DEAR DOCTOR POLING:

I am greatly obliged to you for your letter of November 24 informing me of the action taken by the Mahoning County Medical Society with respect to the Group Health Association, Inc., which has recently entered into the practice of medicine in the District of Columbia.

The American Medical Association has done all that it could to oppose this movement. The Group Health Association has received a charter and is actually an incorporated body. The Home Loan Bank Board, a federal agency, has agreed to provide the sum of $20,000 a year for two years for the purpose of financing the Group Health Association, Inc., in the face of the fact that the laws of practically all of the states of the Union specifically declare the practice of medicine by a corporation to be illegal. Membership in the Group Health Association, Inc., is open to all government employees other than those of the Army and Navy, although it is claimed in Washington that the membership is now limited to employees of the Home Owners' Loan Corporation and its affiliated agents.

I am very sure that the Medical Society of the District of Columbia will appreciate the support of the Mahoning County Medical Society in its efforts to combat the corporation practice of medicine, which in the District of Co-

lumbia threatens to have a far reaching and deleterious effect on the private practice of medicine.

With most cordial good wishes, I am,

Very truly yours, Olin West."

Gov. Ex. 459 is a letter from the defendant Olin West to Dr. Poling, Youngstown, Ohio, dated December 4, 1937:

"DEAR DOCTOR POLING:

Your letter of November 30 has just come to hand. The American Medical Association has done everything that it could do to oppose the organization and operation of the Group Health Association, Inc., in the District of Columbia. I think I am safe in saying that the American Medical Association became active in this matter before the Medical Society of the District of Columbia began its efforts in opposition.

The Group Health Association, Inc., secured a charter in the District of Columbia. The Home Loan Bank Board, which I understand is an affiliate of the Home Owners' Loan Corporation, has, according to our information, agreed to finance the Group Health Association, Inc., to the extent of $100,000 if that sum is thought to be necessary, and has taken action whereby $20,000 a year for two years has been set aside for the use of the Group Health Association, Inc. We have done all that we could to oppose this movement on the ground that the corporate practice of medicine is illegal and altogether undesirable, as well as because of a realization of the fact that if all government employees in the District of Columbia who are eligible for membership in the Group Health Association become members, the private practice of medicine in the City of Washington will be largely destroyed. In spite of the fact that representatives of the American Medical Association have sought and have secured the assistance of persons in high official position in Washington, we have never until this good day been able to secure copies of the contract offered by the Group Health Association, Inc., to those who become members.

Senator McCarran has demanded an investigation of this whole movement and has raised the question on the floor of the Senate concerning the right of an agency of the federal government to appropriate money for such purposes as those for which the Home Loan Bank Board has already made definite commitments.

We were informed by persons connected with the Home Owners' Loan Corporation that the Group Health Association, Inc., was organized for the benefit of employees of the HOLC and its affiliated bodies, but the fact is that under the provisions of the charter and the by-laws of this organization all employees of the federal government outside of the Army and Navy are eligible to apply for membership.

The matter is one of concern not only in the City of Washington but also in other centers in the United States where considerable numbers of government employees reside. To my mind, it is difficult to understand just how an official agency of the federal government can agree to finance an organization that is to engage in the corporate practice of medicine in the face of the fact that in practically all states practice by corporations is illegal. The Medical Society of the District of Columbia, according to my latest information, has employed counsel and is seeking to secure rulings from legally constituted officers of the federal government and of the District of Columbia as to the legality of the incorporation and the proposed activities of the Group Health Association, Inc.

With most cordial good wishes, I am,

Very truly yours, Olin West."

Gov. Ex. 161 is a copy of a letter from the defendant West to Dr. S. Adolphus Knopf, dated November 8, 1937:

"DEAR DOCTOR KNOPF:

I am greatly pleased to have your letter of November 3, to which is attached a copy of a letter addressed by you to Mr. Robert L. Hill, a charter member of the Group Health Association, Incorporated, in Washington. I am, of course, greatly pleased that you approve the official attitude of the American Medical Association toward such movements as the Group Health Association, Incorporated.

When one considers the facts with respect to the numbers of Government employees in Washington and in one or two other centers in the United States, one is compelled to wonder what will become of the private practice of medicine in those centers if the government is to subsidize cut-rate medical schemes under which corporations are to engage in the practice of medicine in spite of the fact that practice of medicine by corporations has been repeatedly declared to be illegal in one state after another. Even in the City of

Washington, at least one opinion has been submitted by a duly appointed public official clearly indicating a definite view to the effect that such decisions as have been handed down by a number of courts in various parts of the United States to the effect that practice of medicine by a corporation is illegal are in accord with the law. In so far as I know no public legal authority in Washington has definitely expressed an official opinion concerning the legality or illegality of the practice of medicine by a corporation, but I am specifically informed that the principle involved has been fully covered in a legal opinion uttered by an official of the government of the District of Columbia or an official of the federal government in Washington.

However all this may be, it is nevertheless a fact that the Group Health Association, Incorporated, has begun operations, and that under the provisions of its by-laws and of its charter, government officials who are paid such salaries as to remove them entirely from the category of the low income group are in position to receive medical service to be provided for them on a cut-rate basis by a corporation engaged in the practice of medicine and actually subsidized by an official agency of the federal government.

* * * * * * * *

Very truly yours, Olin West."

Gov. Ex. 195 is a copy of a letter of the defendant Woodward to Dr. G. F. Simpson, President, Medical Society of Virginia, Purcellville, Virginia, dated December 8, 1937:

"Dear Dr. Simpson:

I do not know whether the Medical Society of the District of Columbia has or has not requested the cooperation of the Medical Society of Virginia in the contest with Group Health Association, Inc., in which the Medical Society of the District of Columbia is now engaged. If your attention has already been called to the situation, no harm will be done by this letter. If it has not, possibly you will see your way clear to take an active part in the contest. Certainly there is every reason why you should do so, not only from the standpoint of national interest, but from the standpoint of local interest, for Group Health Association, Inc., a private lay corporation subsidized by the Home Owners Loan

Corporation or its affiliates, plans to furnish medical, hospital, and nursing service to all employees of the Home Owners Loan Corporation and its affiliates, and possibly to other employees of the Federal Government, and all 'dependents' of all such employees, who identify themselves with the Association, not only in the District of Columbia, but within ten miles of the District, and possibly even within twenty miles. Such an area will cover a very substantial space in the State of Virginia. The By-Laws of Group Health Association, Inc., provide:

'To be able to avail themselves of medical and surgical service, the members or dependents must be located in, or within ten miles of the District of Columbia line, or must come to the City of Washington, D. C., except that the Medical Director may provide for house calls not exceeding twenty miles.'

I am sending you a few reprints of our article on Group Health Association, Inc., that you may find interesting, if you overlooked the article when it was published in The Journal, and which may be useful in any cooperative work you may undertake.

I enclose also a clipping from The Evening Star (Washington, D. C.), November 30, 1937, indicating the interest of Senator McCarran of Nevada in the matter. It has occurred to me that possibly you might enlist the interest of your two Virginia Senators, Glass and Byrd, for certainly they are among the most able of all members of the Senate. Senator Byrd is interested, too, in government reorganization, and the maladministration indicated in connection with the activities of the Home Owners Loan Corporation in the present instance ought to arouse his interest. Senator Glass, as chairman of the Senate Committee on Appropriations, will probably be interested in the fact that the Home Owners Loan Corporation or some of its affiliates has "granted" $40,000 of public money to this private lay corporation, organized with the approval of the Corporation and its affiliates, to enable Group Health Association to furnish medical, hospital, and nursing services, not only to employees of the Home Owners Loan Corporation and its affiliates, but to their dependents, and to employees of other branches of the Federal Government, at supposedly bargain prices. The movement represents, it seems to me, a

rank kind of unauthorized medical practice, and the fact that it is to extend into the State of Virginia should be of interest to you.

No one in the House of Representatives has as yet manifested any active interest in this matter, and possibly your Representative Woodrum, a member of the House of Representatives Committee on Appropriations might be interested. There is, of course, no reason why other members of the Virginia delegation should not be appealed to, but Representative Woodrum is in a better strategic position to inquire into the situation, without the formality of a congressional investigation, when the Committee on Appropriations of which he is a member is called on to consider the grant by the Home Owners Loan Corporation or its affiliates.

According to the Washington Post, December 4, an HOLC official undertook to justify the grant of $40,000 of the taxpayers' money to this private corporation as follows:

'Our board of directors decided that it was legal to make a two-year $40,000 investment in the health of our employees. We have no intention of continuing the subsidy, as the GHA is expected to become self-supporting. We look upon this investment as similar to departmental installation of air-conditioning—and there's no objection to that!'

Of course, any such attempt at justification is ridiculous.

In the first place, there is no evidence that the investment made by the HOLC in air-conditioning was not illegal. If the investment was made with funds that were not appropriated for that purpose, it clearly was illegal. More particularly, however, if the investment was made in air-conditioning the homes of employees of the HOLC and its affiliates, the operation was clearly illegal, and the present activities of the HOLC and its affiliates extend into the homes of employees within the District of Columbia and within an area of from ten to twenty miles from the boundaries of the District, for the proposal is to furnish medical, hospital, and nursing service not only to employees of the government, but also to their 'dependents'.

The attempt at justification is moreover silly, in that the present grant was made without competitive bidding and although intended, allegedly, to provide medical, hospital, and nursing services, it was made to a lay body having no special knowledge of any of such services and possessing at

the time of the grant no such services to sell. So far as I am informed, it has * * * under its contract or agreement, and of course, since the $40,000 is to be a grant, and not a loan, it has given no security for the return of the money.

All of these matters should actively interest your senators and representatives, and you might even interest them in the competition with independent medical practices in the State of Virginia that will be set up by this federal subsidy of a lay organization to buy and sell medical services for patients in the State.

Incidentally, I should have mentioned above the fact that Senator King of Utah had announced his interest in the granting of the taxpayers' money to this private lay corporation for furnishing professional services at bargain prices to government employees and their dependents.

Yours truly, W. C. Woodward."

Gov. Ex. 196 is a copy of a letter from the defendant Woodward to Dr. Thomas E. Neill, dated December 15, 1937:

"DEAR DR. NEILL:

I have just seen a copy of the letter sent by the Chairman of the Federal Home Loan Bank Board, John H. Fahey, to Senator McCarran, under date of December 3, undertaking to justify the expenditure of money collected from the taxpayers of the United States generally for the purpose of subsidizing a lay medical and hospital service for the benefit of the children, wives, and other dependents of such employees of the United States Government, including the Chairman himself, as may identify themselves with Group Health Association, Inc. I have been wondering if any effective answer has been made to the Chairman's letter? Certainly, in view of the publicity that has been given to the letter an answer should be made and given equal or greater publicity, so that at least a reasonable number of the Senators and Representatives in Washington will see it. A devastating answer can be prepared without great difficulty.

This leads me to inquire as to just who is leading the force of the Medical Society of the District of Columbia in their fight on the federally subsidized practice of medicine and insurance by lay groups in the District of Colum-

bia and adjacent states. Incidentally, will you not let me know if a contest is or is not being waged by the medical profession of the State of Maryland and the State of Virginia against such subsidized lay practice within their respective jurisdictions—for the subsidized Group Health Association, Inc., proposes to carry on its activities anywhere in either of the states named within twenty miles of the boundaries of the District of Columbia, an area much larger than the District of Columbia itself.

Yours truly, William C. Woodward."

Gov. Ex. 197 is a letter from the defendant Neill to Defendant William C. Woodward in Chicago, dated December 17, 1937:

"My dear Doctor Woodward:

I have your letter of December 15th asking who is leading the fight of the Medical Society of the District of Columbia against socialized medicine. The fight is being led by our Public Relations Counsel, Mr. Fulton Lewis, Jr., under a Steering Committee, consisting of Doctors McGovern, Yater, Schreiber and myself, ex-officio member of the committee, together with counsel for the Medical Society, and additional counsel, Mr. George Hoover and Mr. William Leahy.

We have felt all along that in the case of the HOLC there was a misappropriation of funds, and I enclose herewith the latest press news dealing with the subject.

As yet we have not been advised by the Corporation Counsel whether or not this organization is practicing medicine illegally, although the briefs have been presented to him some time ago. I feel that we will be able to break this organization entirely, but I do not feel that the fight ends there, as the socialistic tendency of the present administration is so strong that attempt may be made to pass a bill making these illegal acts legal. Maryland and Virginia, both, due to their proximity to the District of Columbia, are getting interested in this matter, and we feel that every state society in the country should be interested if we are to be the ultimate winners.

Very sincerely yours, Thomas E. Neill."

Gov. Ex. 204 is a copy of a letter from the defendant Woodward to the defendant Neill, dated December 22, 1937:

"DEAR DR. NEILL:

I thank you for your letter of December 17, relative to Group Health Association, Inc.

Frankly, I cannot conceive of any public relations counsel for a state medical society, unless he is a member of the society and well up in its ranks, leading such a fight as you have on your hands. I cannot conceive of its being the function of any public relations counsel to do so unless he is a member of the organization and high up in its rank. For a medical organization to employ a layman to lead such a fight strikes me as an anomaly.

Of course, your counsel must lead the fight in so far as involves its legal factors. Your public relations counsel may lead the fight in so far as refers to publicity and relative matters. But the whole leadership must devolve on officers and agents of the Medical Society of the District of Columbia, who in the end must be responsible to the Society even for the activities of counsel and public relations counsel.

You write that your Public Relations Counsel, Mr. Fulton Lewis, Jr., is leading the fight 'under a Steering Committee, consisting of Doctors McGovern, Yater, Schreiber and myself (yourself), ex-officio member of the committee, together with counsel for the Medical Society, and additional counsel, Mr. George Hoover and Mr. William Leahy.' Certainly, however, it seems to me that some one member of the Medical Society of the District of Columbia ought to be personally responsible for what goes on, although with the advice of a committee, of course.

You write that Maryland and Virginia are getting interested. Yes, I called the attention of the proper officers of the State medical organizations of those two jurisdictions to the situation and suggested that there was something for them to do. It seems to me, however, that it is for you to get in touch with the medical societies of the counties immediately adjacent to the District of Columbia and to get them interested. The members of those organizations have votes; the members of the Medical Society of the District of Columbia have not. Moreover the members of the medical societies in the counties immediately adjacent to the District have an active personal interest in the matter that physicians in Maryland and Virginia in more remote parts of the states have not, and

therefore your neighboring medical societies offer a better chance of arousing interest than exists through any other method of approach.

Yours truly, William C. Woodward, Director."

Gov. Ex. 37 was read from to the jury:

"Minutes of the Stated Meeting of the Medical Society of the District of Columbia, January 5, 1938. (Excerpt)

Dr. Thomas E. Neill, President, presiding.

Present: Drs. Alfaro, Murray, Elward, Thompson, Vaughan, Jacobs, Hiram Reede, Leech, William Gerry Morgan, F. X. McGovern, McChesney, Reichelderfer, H. C. Macatee, Ellison, Coulter, Bernton, Pendexter, Davis, Connolly, Herbst, Chipman, Bennett, and others to the number of about 300.

The minutes of the previous meeting, held December 15, 1937, were read and approved.

* * * * * * *

Dr. R. Arthur Hooe said the forum idea sounds good and he hoped it would lead to something constructive. He felt there was one thing that the medical profession should look squarely in the face and that was that the problem was by no means a one-sided one. There has been a crying demand for years and that demand has not been met by the medical profesion. He felt that two things were very important: (1) Organized medicine to stand solidly together; (2) that some time in the near future there should be appointed a committee to ask for a hearing before the various boards of directors of various civil hospitals in Washington, and that the committee should very definitely ask a decision from the boards as to what their hospitals will do in the matter.

Dr. Hooe added that it seems sure that the hospitals will stand by the Society. In regard to Dr. McGovern's suggestion for the Sunday meeting, Dr. Hooe felt that the Medical Society's Auditorium would not accommodate all those who should be invited. He wondered what would be accomplished by such a meeting, in view of that the fact that the Society has not as yet adopted any policy."

Mr. Leahy: Will you read beginning on the bottom of page 10, Mr. Lewin, please? That brings up this forum that Dr. Hooe just spoke about.

Mr. Lewin: Yes.

"The Secretary thought there might be a combination of forces in these forums. He said there might be a misunderstanding if proper publicity is not given to the Sunday meeting—it might seem as though the Society was on the defensive. He thought the public forum idea was an excellent plan. He thought there should be some way in which Drs. Christie and Yater could state the position of organized medicine in the present situation along with the advocates of full-time health people."

Mr. Lewin: More?
Mr. Leahy: Yes.

Dr. C. N. Chipman was of the opinion that the proposition involved public policy and should be referred to the Executive Committee and the membership should be notified.

Dr. William P. Herbst, Jr., stated that the Society has been on the defensive all along and should present its position to the public so it will not be on the defensive. He thought the more influential men participating in the forum, the more would be accomplished. He felt that it was time for the Society to come out from behind and just say nothing and be constantly attacked by all different sources both sincere and insincere."

Mr. Lewin: More?
Mr. Leahy: Yes.

"Dr. V. R. Alfaro called attention to the provisions for a Steering Committee and to an article which appeared in the Sunday Post, January 2, 1938, the last paragraphs of which read as follows:

"That the Society is in no mood for compromise and plans to fight Group Health Association to the end was indicated last night by one of its highest officers.

Neither the HOLC plan nor any other prepayment plan is tolerable to the Society," he said. "People who wish to budget their medical expenses are invited to use the Medical-Dental Service Bureau, where fees are reasonably adjusted and payment can be extended over many months."

Dr. Alfaro pointed out that to his knowledge the Society had not authorized any official to commit the Society and had not gone on record either way. It is at the present time studying the matter. He felt that this type of mis-

information to the public should be investigated immediately.

Dr. Prentiss Willson made a motion that the matter of the newspaper article be referred to the Committee of Censors with instructions that an attempt be made to find out who was responsible for this statement and to take appropriate action. Seconded by Dr. R. A. Hooe. Duly Adopted."

Mr. Lewin: The rest has nothing to do with the case, do you think, Cavanagh, Public? Do you want that?

Mr. Leahy: Only that they adopt the forum idea.

Mr. Lewin: All right.

"Dr. Cavanagh restated his motion:

1. That the Medical Society of the District of Columbia approve in principle the Public Health Forum of Georgetown University.

Dr. Prentiss Willson offered an amendment, duly seconded and adopted, to the effect that it be added that the Society does not commit itself to any views expressed.

2. That the subject matter for the current week's program be included in the regular announcements of the Society.

Upon motion, duly seconded, Dr. Cavanagh's motion, as amended by Dr. Willson, was duly adopted."

Gov. Ex. 87 was read from to the jury as follows:

"Minutes of the Business Meeting of the Medical Society of the District of Columbia held February 2, 1938. (Excerpt.)

Dr. Thomas E. Neill, President, Presiding.

Present: Drs. Gwynn, Mallory, Cajigas, Wall, Yater, Schoenfeld, Mattingly, Herbst, Horgan, Cake, J. Rogers Young Trinder, Alfaro, Bolton, Pickford, Mundell, Bernton, Nicholson, and other members to the number of about 90.

The minutes of the preceding meetings held January 5, January 12, January 19, and January 26, were read and approved.

. . . . . .

Dr. Thomas E. Mattingly was recognized. He said that a couple of weeks ago a member of the Executive Committee made a statement that Sibley Hospital was wide open for Group Health Association, Inc. He said he wanted to say that the organized profession has not got a stauncher, firmer friend in Washington than Dr. Lewis H. Taylor, and that Dr. Taylor authorized him to say that at no time has H. O. L. Group Health Association had a patient in Sibley Hospital, known to be such. He added that not many months ago Dr. Selders made application to practice in Sibley Hospital, asking for privileges in general medicine, major and minor gynecology, major and minor obstetrics, and major and minor surgery. The gentleman's application was turned down.

Dr. Mattingly offered the following motions:

1. That the proper agency of the Medical Society be instructed to present at our next stated meeting the facts relating to the present status of Group Health physicians at the various Washington Hospitals preliminary to appropriate disciplinary action, in event any hospital has ignored the Medical Society's wishes in the premises.

2. That the proper agency of the Society take immediate measures to ascertain if any member or members of the Society are party to secret understandings and unethical arrangements with Group Health Association, Inc., whereby Group Health patients are admitted to Washington Hospitals and treated under the service or supervision of Medical Society members possessing hospital privileges.

Upon motion by the Secretary, duly seconded, it was adopted that these motions be referred to the Executive Committee for consideration."

Mr. Lewin: And the minutes are signed——

Mr. Leahy (interposing): Well, just read on.

Mr. Richardson: Continue.

Mr. Lewin: Read on.

"Dr. R. Arthur Hooe would inquire of Dr. Mattingly whether his name was mentioned in regard to the alleged statement concerning Sibley Hospital.

Dr. Mattingly answered that it was Dr. Hooe, and the statement was that Sibley Hospital was wide open to Group Health Association, Inc.

Dr. Hooe said he wished to assure Dr. Mattingly that there never was such a statement made by him nor any other member of the Executive Committee. 'At the last meeting of the Executive Committee, as a note of warning, I called the committee's attention to the fact that I had been told in my office but a few days before that Sibley Hospital was admitting one, the surgeon of H. O. L. C. That is a vastly different statement from the aspersion that Sibley Hospital is wide open to H. O. L. C. doctors. My statement was that I had been informed that one of them was being admitted to practice in Sibley Hospital.' Dr. Hooe, therefore asked Dr. Mattingly to convey the message to Dr. Taylor.

Dr. Mattingly apologized and stated that in all probability he was guilty of a misquotation.

Dr. Hooe said in that event his message to Dr. Taylor was not necessary.

C. B. Conklin, Secretary."

Mr. Leahy: Well, would you read on page 8, please, what the counsel for H. O. L. C. is doing with regard to briefs, beginning on, I think it is, paragraph 8?

Mr. Lewin: Page 8?

Mr. Leahy: Yes.

Mr. Lewin: Yes.

Mr. Leahy: The paragraph 8 there.

Mr. Lewin: Oh, yes.

A memorandum of telephone conversation held between the offices of Mr. George Hoover and the President of the Society, relative to the present status of Group Health Association, Inc.:

"February 2, 1938.

Mr. George Hoover phoned me this morning to acquaint me with the facts of what is going on in the Legal Department in regard to the H. O. L. C.

Mr. Fenning, Mr. Hoover and Mr. Leahy have had consultations and Mr. Fenning had an interview with Mr. Underwood, of the District Attorney's office, and the attorney for the H. O. L. C. had filed a brief which Mr. Hoover and Mr. Leahy thought did not present all the facts and therefore was not the proper brief to present to the judges.

After Mr. Fenning went away Mr. Hoover has been in

touch with Mr. Underwood and as the matter now stands the attorney for the H. O. L. C. has been given until February 16 to comply with the request that they file a brief which is acceptable to all attorneys concerned as the previous one had omitted some very important items. Should the attorney for the H. O. L. C. not comply with this request, Mr. Hoover feels that we should file injunction proceedings as the next step. This requires the names of four members of the Medical Society practicing medicine in the District of Columbia as individuals. I have talked with four gentlemen who are willing to have the Society use their names, Joseph S. Wall, Loren B. T. Johnson, J. W. Burke, and Sterling Ruffin.

(Memorandum submitted by the president, Dr. Neill.)"

Gov. Ex. 48 is a copy of a letter from the defendant Conklin to the defendant Hooe, chairman, Compensation, Contract and Industrial Medicine Committee, Medical Society of the District of Columbia, Washington, D. C.; dated February 25, 1938:

"DEAR DR. HOOE:

Pursuant to action of the Executive Committee in session on the evening of February 21, 1938, the enclosed resolution submitted to the Society on February 2, 1938, is referred to your committee.

Very truly yours, C. B. Conklin."

The enclosed resolution was read to the jury as follows:

"That the proper agency of the Society take immediate measures to ascertain if any member or members of the Society are party to secret understandings and unethical arrangements with Group Health Association, Inc., whereby Group Health patients are admitted to Washington hospitals and treated under the service or supervision of Medical Society members possessing hospital privileges."

Gov. Ex. 37 was read from to the jury:

"Minutes of the Executive Committee of the Medical Society of the District of Columbia, February 21, 1938, (excerpt).

Defendant Sprigg, chairman, presiding.

Present: Drs. Borden, Claud, Gra[illegible] Holden, Hooe, McGovern, Neill, John Reed, Hiram Reede, C. B. Conklin, Mr. Charles S. Baker, Acting Counsel, by invitation.

The minutes of the Executive Session of the committee, held December 10, and meetings of December 27 and January 24 were read and approved.

* * * * * * *

The matter of Dr. Mario Scandiffio's trial and the proper action that should be taken at this time by the Executive Committee was now up for discussion.

Dr. R. Arthur Hooe emphasized that in his conversation with Mr. George P. Hoover that there were no legal aspects to the trial and that there were no repercussions that might take place should the Society take action previous to the obtaining of a declaratory judgment which was now before the courts. The court would not be influenced at all.

Upon motion, duly seconded, it was found, upon ballot, that Dr. Scandiffio was guilty as charged. Seven ballots were in the affirmative; two members not voting.

Dr. Hooe, at this point, said that Dr. Sterling Ruffin was unable to be present but it was his opinion that Dr. Scandiffio should be expelled from the Society.

Upon further motion it was recommended to the Society that Dr. Mario Scandiffio be expelled (Report, finding and recommendation appended)."

THE MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA

In the Matter of Mario Scandiffio, M.D.

Whereas, the Compensation, Contract and Industrial Medicine Committee, by its Chairman, R. Arthur Hooe, M.D., under date of November 22, 1937, did submit in writing to the Executive Committee charges against Mario Scandiffio, M.D., a member of the Medical Society of the District of Columbia specifically charging him with having violated Chapter IX, Article III, Sections 1 and 2, and Chapter IX, Article IV, Section 5, of the Constitution of the Society.

And whereas, after due notice to the said Mario Scandiffio, M.D., the Executive Committee did hold hearings at which the said Mario Scandiffio, M.D., wit his counsel, did appear, did testify in his own behalf, did produce witnesses in his defense, and was accorded full and fair hearing in response to said charges; the said charges were fully and impartially investigated and at the conclusion of the said

hearings, arguments, both oral and written, were submitted by counsel for said Mario Scandiffio, M.D.

Thereafter, all of the evidence adduced at the said hearings was duly considered by the Executive Committee, and upon consideration thereof, the said Executive Committee, by more than a two-thirds vote, finds the said Mario Scandiffio, M.D., guilty of violating Chapter IX, Article III, Sections 1 and 2, and Chapter IX, Article IV, Section 5, of the Constitution of the Medical Society of the District of Columbia, as charged by the Compensation Contract and Industrial Medicine Committee, and recommends that he be expelled from said Society.

And it is further ordered, that the report, findings and recommendation of the Executive Committee be submitted in writing to the Medical Society of the District of Columbia at its next regular business meeting for such action as may be deemed proper pursuant to its Constitution.

William Mercer Sprigg.

* * * * * * *

Relative to certain resolutions that had been prepared by Dr. Thomas E. Mattingly at the meeting of the Society, held February 2, 1938, it was, upon motion, adopted that resolution (a) be referred to the Hospital Committee for consideration and early report, and resolution (b) be referred to the Compensation, Contract and Industrial Medicine Committee.

At this point Dr. R. Arthur Hooe addressed the meeting, stating that he was in a dilemma as to how to proceed. His telephone rang frequently, telling him of alleged work that had been done by various members of the Society for Group Health Association, Inc.

Dr. Thomas E. Neill turned over to Dr. Hooe a written statement at this time which would tend to show that two members of the Society were guilty of working for the Group Health Association. This statement had come from Dr. M. F. Kennedy and the information was based upon prescriptions for glasses that had reached Teunis, Opticians.

* * * * * * *

The Secretary also spoke of a letter from Dr. W. C. Woodward which he had allowed Dr. F. X. McGovern to read, in which Dr. Woodward's interest was expressed in resolutions that had been prepared by the Secretary, decrying

the attitude as expressed in an editorial of the New England Journal of Medicine at January 20, 1938.

The Secretary was instructed to furnish Dr. McGovern and his Committee on Public Relations with copy of Dr. Woodward's letter, so that his committee could take the proper action relative to the Secretary's resolutions.

C. B. Conklin, Secretary."

Gov. Ex. 83 is a letter from C. B. Conklin, Secretary of the District Medical Society, to Dr. J. Ogle Warfield, Jr., chairman of the Hospital Committee of the District Medical Society, dated February 25, 1938.

"DEAR DR. WARFIELD:

Pursuant to action of the Executive Committee, in session on the evening of February 21, 1938, the enclosed resolution, which was presented to the Society at the Business Meeting in February, was ordered referred to the Hospital Committee for consideration and report.

Very truly yours, C. B. Conklin, M.D."

The enclosed resolution is as follows:

"That the proper agency of the Medical Society be instructed to present at our next stated meeting the facts relating to the present status of Group Health physicians at the various Washington hospitals preliminary to appropriate disciplinary action, in event any hospital has ignored the Medical Society's wishes in the premises."

The Government requested a ruling on Gov. Exs. 312, 314, 315, 316, 317, 318, 319, 320, and 321. The objections of the defendants to these documents that they were incompetent, irrelevant, immaterial and inadmissible, as no conspiracy had been proven, were hearsay and were not properly identified and proven, were overruled and exception noted.

Gov. Exs. 312, 314 to 321, inc., were received in evidence.

Gov. Ex. 313, without the handwritten notation on the bottom thereof, was offered in evidence. Defendants objected on the grounds that it was incompetent, irrelevant, immaterial, that it was only a rough draft and was not the final resolution submitted by the writer, that no conspiracy had been proven, that it was hearsay and had been not

properly proven. These objections were overruled and exception noted.

Gov. Ex. 313 was received in evidence.

Gov. Ex. 324 was received in evidence against Dr. Warfield only.

The Government then requested a ruling on Gov. Exs. 295b to and including 311. The defendants objected on the ground that the documents were incompetent, irrelevant, immaterial, were hearsay, no conspiracy had been proven, were improperly proven and were not shown to have been authorized by any of the Washington hospitals which are corporations and that the proof was insufficient to show a conspiracy involving the Washington hospitals. These objections were overruled and exception noted.

Gov. Exs. 295b to 311, inc., were received in evidence, i. e., the typewritten questions of each of these exhibits.

Gov. Exs. 296, 297, 305, 306 and 311 were received in evidence in full.

WILLIAM F. PENNIMAN (Recalled).

Direct examination.

By Mr. Lewin:

I saw Dr. Allan E. Lee on December 10, 1937, in my office in the HOLC.

After receiving a letter from Dr. Custis, I talked to Col. Randall, President of the Homeopathic Hospital. This was after the clinic had opened.

I received Gov. Ex. 326A in reply to a letter of November 8, 1938.

Gov. Ex. 327A is a carbon of a letter I sent to Providence Hospital dated November 11, 1937.

Gov. Ex. 328A is a letter I received from Providence Hospital dated Nov. 18, 1937.

Gov. Ex. 329 is a carbon copy of a letter I wrote to Providence Hospital dated Dec. 14, 1937.

Gov. Ex. 326A, 327A, 328A and 329 were offered in evidence. Defendants objected on the grounds of incompetency, irrelevancy, immateriality, the correspondence was hearsay, no conspiracy had been proven, and they were not shown to be authorized. These objections were overruled and exception noted.

Gov. Exs. 326A, 327A and 329 were received in evidence.

Gov. Ex. 17, a copy of a letter from Penniman to Sister Rosa, Superintendent of Providence Hospital, dated Nov. 8, 1937, was read to jury as follows:

"DEAR SISTER ROSA:

For your information, I am attaching hereto a copy of a letter addressed to the Providence Hospital, requesting permission to admit patients who are members of the Group Health Association to the Hospital upon the request of the Medical Director.

Also, a request to permit Dr. Raymond E. Selders, Surgeon, who is attached to the staff of the Group Health Association, to attend these patients while hospitalized.

For your further information, there is attached a record of Dr. Selders' education, training and experience,

Your assistance in obtaining prompt and favorable action will be very much appreciated.

Very truly yours, William F. Penniman, President."

Gov. Ex. 326A, a letter from Sister Rosa to Penniman, President, Group Health Association, dated November 9, 1937, was read to the jury as follows:

"DEAR SIR:

We acknowledge receipt of your letter of November 8. In reply wish to state that we will accept members of the Group Health Association as patients in Providence Hospital, acording to the rules and regulations of our Hospital, at the customary rates for a period not to exceed twenty-one days.

We are enclosing an application form requesting Surgical privileges, to be filled out by Dr. Selders, and on receipt of same will be pleased to place it before our Medical Board for its approval, which is our usual procedure.

Very truly yours, Providence Hospital, per Sister Rosa, Acting Superintendent."

Gov. Ex. 327A, Peniman's reply to Sister Rosa dated November 11, 1937, was read to the jury as follows:

"DEAR SISTER ROSA:

Please accept our thanks for your very prompt and courteous reply to our letter addressed to the Providence Hospital, under date of November 8th.

We note with pleasure that the Providence Hospital will accept Members of the Group Health Association as patients, according to the rules and regulations of your hospital, at the customary rates. The Group Health Association will be responsible for the payment of the costs of hospitalization at customary rates, in each case for a period limited to 21 days for any one illness, for each patient admitted upon the request of the Medical Director.

Dr. Raymond E. Selders, Surgeon, attached to the staff of the Group Health Association, has filled out and signed the application form requesting surgical privileges which you enclosed and the same is being returned to you herewith. Dr. Selders has asked me to say to you that upon approval of his application he will be happy to extend to the Providence Hospital the fullest cooperation in all matters where it is felt that he would be useful. It would be much appreciated if early consideration of Dr. Selders' application could be made.

Again thanking you, I am

Very sincerely yours, William F. Penniman, President."

I enclosed with my letter of November 11, 1937, an application made by Dr. Selders. When I said "Dr. Selders has asked me to say to you that upon approval of his application he will be happy to extend to the Providence Hospital the fullest cooperation in all matters where it is felt that he would be useful," it was intended to mean that Dr. Selders, if he were there attending a Group Health patient, and an accident, an emergency case, or anything came in, Dr. Selders would be glad to lend his assistance in connection with the work in the hospital—do anything there that they would ask of him cooperatively.

Gov. Ex. 328A, a letter from C. C. Caylor, Secretary, Providence Hospital, to W. F. Penniman, President, Group Health Association, dated November 18, 1937, was read to the jury as follows:

"DEAR MR. PENNIMAN:

The application of Dr. Raymond E. Selders for surgical, gynecological and obstetrical privileges in Providence Hospital was presented to the Executive Staff of the Hospital today. The application was referred to the committee on

Surgical Privileges for consideration and report, which procedure is in accordance with our established custom.

Dr. Selders will be notified promptly upon the Committee's report.

Sincerely yours, C. C. Caylor, M. D., Secretary."

Gov. Ex. 329, a copy of a letter from Penniman to C. C. Caylor, Secretary, Providence Hospital, dated December 14, 1937, was read to the jury as follows:

"DEAR DR. CAYLOR:

On November 18th you informed us that the application of Dr. Raymond E. Selders for surgical, gynecological and obstetrical privileges in Providence Hospital had been referred to the Committee on Surgical Privileges for consideration.

The purpose of my letter at this time is to inquire if this committee has as yet had an opportunity to complete its investigation and whether Dr. Selders' application has been approved.

Your prompt reply will be appreciated.

Yours very truly, William F. Penniman, President."

Gov. Ex. 330 is a reply to my letter of November 8, addressed to Columbia Hospital. Gov. Ex. 331, dated November 11, is a letter I sent to Columbia Hospital. Gov. Ex. 332 is a carbon copy of a letter which I sent to Capt. Chester Wells. Gov. Ex. 333 is a carbon copy of a letter which I sent to Col. Ashburn. Gov. Ex. 334 is a reply which I received from Col. Ashburn.

Gov. Exs. 18, 330-334, inc., were offered in evidence.

Defendants objected on the ground of incompetency, irrelevancy, immateriality, hearsay, no conspiracy had been proved particularly involving Washington hospitals. These objections were overruled and exception noted.

Gov. Exs. 18, 330-334, inc., were received in evidence.

The following exhibits were read to the jury.

Gov. Ex. 18 is a copy of a letter written by Penniman to Capt. Chester Wells, President, Board of Trustees, Columbia Hospital, dated November 8, 1937:

"DEAR CAPTAIN WELLS:

For your information I am attaching hereto a copy of a letter addressed to the Columbia Hospital, requesting per-

mission to admit patients who are members of the Group Health Association to the hospital upon the request of the Medical Director.

Also, a request to permit Dr. Raymond E. Selders, Surgeon, who is attached to the staff of the Group Health Association, to attend these patients while hospitalized.

For your further information, there is attached a record of Dr. Selders' education, training and experience.

Your assistance in obtaining prompt and favorable action will be very much appreciated.

Very truly yours, William F. Penniman, President."

Gov. Ex. 330 is a letter from P. M. Ashburn, Superintendent, Columbia Hospital, dated November 9, to Mr. Penniman.

"DEAR SIR:

I acknowledge receipt this morning of your letter of November 8th, requesting Columbia Hospital to admit members of the Group Health Association for customary hospital service upon the request of its Medical Director, Dr. Henry Rolf Brown, and also that Dr. Raymond E. Selders be allowed to attend these patients while hospitalized.

I have no doubt that the Executive Committee of the Board of Directors, to which I shall submit this matter at its meeting on Monday, November 15th, will be glad to agree to accept members of your organization for customary hospital service upon the request of its Medical Director.

As for the request that Dr. Selders be allowed to treat these patients while they are in the hospital, I must inform you that nobody is allowed to treat patients in the hospital except physicians who have been appointed to either the regular or the courtesy staff by the Board of Directors. Dr. Selders has not been so appointed, nor has he made application for appointment. I therefore take pleasure in forwarding herewith a form of application and a letter of information and instructions in regard to such application. I would add that applications received from medical men desiring courtesy privileges are uniformly referred to the Medical Board of the hospital which considers and makes recommendations in regard to them to the Board of Directors. So far as my experience and observation go, the

Board of Directors has always accepted the Medical Board's recommendations.

The next meeting of the Medical Board will be on the evening of Tuesday, November 23rd, and I recommend that Dr. Selders' application be submitted before that date.

Yours very truly, P. M. Ashburn, Superintendent."

Attached to Col. Ashburn's letter is a form notice to the doctor headed "Dear Doctor:" and instructing him on the steps to be taken by him to obtain courtesy privileges.

Gov. Ex. 331 is a letter from Penniman to Columbia Hospital dated November 11, 1937:

"GENTLEMEN:

Please accept our thanks for your very prompt and courteous reply to our letter addressed to the Columbia Hospital for Women, under date of November 8th.

We note with pleasure your statement that you have no doubt that the Executive Committee of the Board of Directors, to which you will submit this matter, at its meeting on Monday, November 15th, will be glad to accept members of the Group Health Association for customary hospital service, upon the request of the Medical Director.

With reference to our request to permit Dr. Raymond E. Selders, Surgeon, attached to the staff of the Group Health Association, to attend these patients while so hospitalized, we have had Dr. Selders complete the application, which you enclosed with your letter, and the same is being returned to you herewith.

Dr. Selders has asked me to say to you that upon approval of his application he will be happy to extend to the Columbia Hospital for Women the fullest cooperation in all matters where it is felt that he would be useful.

An early reply from you will be appreciated.

Very sincerely yours, William F. Penniman, President."

I enclosed with my letter of November 11, 1937, an application filled out by Dr. Selders.

The following exhibits were read to the jury:

Gov. Ex. 332 is a letter from Penniman to Capt. Wells, President, Board of Trustees, Columbia Hospital, dated November 18, 1937:

"DEAR CAPTAIN WELLS:

Please accept my very sincere thanks for your very prompt and courteous reply to my letter of November 8th, requesting the admission of members of the Group Health Association for customary hospital service upon the request of its Medical Director, Dr. Henry Rolf Brown, also to permit Dr. Raymond E. Selders, Surgeon, attached to the staff of the Group Health Association, to attend these patients while hospitalized.

Colonel Ashburn, your Medical Superintendent, wrote us very promptly, stating that he had no doubt that the Executive Committee of the Board of Directors, to which he would submit this matter at its meeting on Monday, November 15th, would be glad to agree to accept members of our organization for customary hospital service upon the request of its Medical Director.

With respect to our request concerning Dr. Selders, Colonel Ashburn enclosed a form on which he could make application, together with a letter of information and instructions with regard to preparing such application. The application form was promptly filled out by Dr. Selders and returned to the Columbia Hospital for Women, addressed to the Attention of Colonel Ashburn, under date of November 11th.

Because of the extreme urgency of this matter, we are hopeful of a prompt and favorable reply.

With very regards, I am,

Sincerly yours, William F. Penniman, President."

Gov. Ex. 333 is a letter from Penniman to Col. Ashburn dated December 14, 1937:

"DEAR COLONEL ASHBURN:

You will recall our letter written to you under date of November 11th in response to your letter of November 9th concerning our request to have the Columbia Hospital for Women admit members of the Group Health Association for customary medical service and to permit Dr. Raymond E. Selders, Surgeon, attached to the staff of the Group Health Association, to attend these patients while hospitalized.

We would deeply appreciate knowing whether or not the Executive Committee of the Board of Directors has as

yet had an opportunity to act on Dr. Selders' application which was submitted to you with our letter of November 11th.

Your prompt reply will be very much appreciated.

Yours very truly, William F. Penniman, President."

Gov. Ex. 334 is Col. Ashburn's reply to Mr. Penniman dated December 15, 1937:

"My dear Mr. Penniman:

Replying to your note of yesterday, I have the honor to inform you that Dr. Selders' application for courtesy privileges has not yet gone from the Medical Board to the Board of Directors or its Executive Committee.

The Medical Board will hold its next meeting on December 28th, and it may then make a recommendation, but I can not know that it will.

Very truly yours, P. M. Ashburn, Superintendent."

After I had sent Dr. Selders' application I talked with Sister Rosa, the superintendent of Providence Hospital.

I received Gov. Ex. 335 from Sister Rodriguez. Gov. Ex. 336 is a carbon copy of a letter which I wrote to Sister Rodriguez dated December 14, 1937. Gov. Ex. 337 is the reply which I received from Sister Rodriguez dated December 16, 1937. Gov. Ex. 338 is a copy of a letter which I sent to Sister Rodriguez on December 18, 1937. I cannot identify Gov. Ex. 339, which is dated December 27, 1937. Gov. Ex. 340 bears the signature of Dr. Selders.

Gov. Exs. 19, 20, 335, 336, 337, 338 and 340 were offered in evidence.

Defendants objected on the grounds that these letters were incompetent, immaterial, irrelevant, no conspiracy had been proven, and hearsay. Objection overruled and exception noted.

Gov. Exs. 19, 20, 335, 336, 337, 338 and 340 were received in evidence.

Gov. Exs. 19 and 20 were letters from William F. Penniman to Georgetown University Hospital dated November 8, 1937. Both of these letters are substantially the same as the letters of Mr. Penniman to other hospitals of that day which were just read.

The following exhibits were read to jury:

Gov. Ex. 335 is a letter from Sister Rodriguez, Superintendent, Georgetown University Hospital, to Mr. Penniman dated November 18, 1937:

"My dear Mr. Penniman:

I have referred your letter of November 8th to the Executive Staff for their consideration.

I shall be pleased to communicate with you concerning their decision.

Sincerely yours, Sister Mary Rodriguez."

Gov. Ex. 336 is a copy of a letter from Penniman to Sister Rodriguez of Georgetown University Hospital dated December 14, 1937:

"Dear Sister Rodriguez:

On November 18th, you acknowledged receipt of our letter dated November 8th stating that it had been referred to the Executive Staff for their consideration. You will recall that our letter requested the Georgetown University Hospital to admit members of the Group Health Association for customary hospital service upon the request of its Medical Director, Dr. Henry Rolf Brown, and to permit Dr. Raymond E. Selders, attached to the staff of the Group Health Association to attend these patients while hospitalized.

Would you be good enough to inform us whether or not the Executive Staff has as yet had an opportunity to take action on our request.

Your prompt reply will be appreciated.

Yours very truly, William F. Penniman, President."

Gov. Ex. 337 is Sister Rodriguez's reply to Mr. Penniman dated December 16, 1937:

"My dear Mr. Penniman:

Your letter dated November 8, was referred to the Executive Staff at its last regular meeting, December 13, 1937.

I have been instructed to inform you that the hospital will be glad to admit patients from the Group Health Association.

It is however, and has been for some time, a regulation of this institution that no physicians or surgeons shall be

permitted to treat patients within the hospital except those whose formal applications have been approved by the Credential Committee.

To this date we have not received a formal application from Dr. Selders for privileges to practice in the Georgetown University Hospital.

With every good wish, I remain

Sincerely yours, Sister Mary Rodriguez."

Gov. Ex. 338 is Mr. Penniman's reply to Sister Rodriguez:

"My dear Sister Rodriguez:

I acknowledge with pleasure the receipt of your letter of December 16th, in which you advise that you have been instructed to inform us that the Georgetown University Hospital will be glad to admit patients who are members of the Group Health Association.

I am aware of the regulations of the various hospitals with respect to the requirement of having Dr. Selders' application approved by the Committee on Credentials, before he is permitted to treat patients while so hospitalized. Each of the hospitals, however, have their own application blanks which they forwarded for completion by Dr. Selders. I assume that the Georgetown University Hospital likewise has an application blank of this type. If you would be good enough to forward a blank, Dr. Selders will be happy to immediately fill it out and return it to you.

Pending such investigation as is found to be necessary, some of the hospitals have been good enough to grant permission to Dr. Selders to treat emergency cases, explaining that this is a customary privilege extended to physicians and surgeons who are duly licensed to practice in the District of Columbia. If this temporary courtesy could be extended to Dr. Selders in the interim period, it would be greatly appreciated.

Thanking you, I am,

Very sincerely yours, William F. Penniman, President."

Gov. Ex. 340 is a letter dated December 28, 1937, addressed to Sister Rodriguez:

"Dear Sister Mary Rodriguez:

I wish to apply for admission to the courtesy staff of the Georgetown University Hospital, and will appreciate it very

much if you will kindly forward me the necessary application blanks.

Very respectfully, Raymond E. Selders, M. D., Surgeon."

Gov. Exs. 21 and 22 were offered in evidence.

Gov. Ex. 341 is the reply to my letter of November 8 which I received from Dr. Eisenman, Superintendent of Garfield Hospital, dated November 9. Gov. Ex. 342 is a carbon copy of a letter which I wrote to Garfield Hospital on November 11, 1937. Gov. Ex. 344 is a letter which I received from Dr. Eisenman dated November 24, 1937. Gov. Ex. 345 is a copy of a letter which I wrote to Dr. Eisenman dated Dec. 2, 1937. Gov. Ex. 346 is a carbon copy of a letter which I wrote to Dr. Eisenman on December 14, 1937. Gov. Ex. 347 is a letter which I received from Dr. Eisenman dated December 17, 1937.

Gov. Exs. 341, 342, 344, 345, 346, 347 and 348 were offered in evidence.

Defendants objected, including Gov. Exs. 21 and 22, on the grounds that they were incompetent, irrelevant, immaterial, no conspiracy had been proven, that they were hearsay and contained expressions of opinions. These objections were overruled and exception noted.

Gov. Exs. 21, 22, 341, 342, 344, 345, 346, 347, and 348 were received in evidence.

The following exhibits were read to the jury:

Gov. Ex. 21 is a letter from Penniman to Garfield Hospital dated November 8, 1937:

"GENTLEMEN:

The Group Health Association, Inc., a mutual voluntary organization, has been created by the employees of the Federal Home Loan Bank Board and its agencies for the purpose of providing themselves and dependent members of their families with medical and surgical care and, when necessary, with hospitalization in recognized hospitals of high standing.

As the representative of the Group Health Association, I hereby request the Garfield Hospital to admit members of

the Group Health Association for customary hospital service upon the request of its Medical Director, Dr. Henry Rolf Brown.

Request is also made to permit Dr. Raymond E. Selders, Surgeon, attached to the staff of the Group Health Association, to attend these patients while hospitalized. For your information, we are attaching hereto a record of Dr. Selders' education, training and experience.

The Group Health Association will be responsible for the payment of the costs of hospitalization at customary rates, in each case for a period limited to 21 days for any one illness for each patient admitted upon the request of the Medical Director.

If you desire further information or a conference with us, we shall be glad to have you let us know. Because of the importance of this request, however, an early and favorable reply will be appreciated.

Very truly yours, William F. Penniman, President."

Gov. Ex. 22 is a letter from Penniman to Aspinwall, President of Garfield Hospital, dated December 8, 1937:

"DEAR MR. ASPINWALL:

For your information, I am attaching hereto a copy of a letter addressed to the Garfield Memorial Hospital, requesting permission to admit patients who are members of the Group Health Association to the hospital upon the request of the Medical Director.

Also, a request to permit Dr. Raymond E. Selders, Surgeon, who is attached to the staff of the Group Health Association, to attend these patients while hospitalized.

For your further information, there is attached a record of Dr. Selders' education, training and experience.

Your assistance in obtaining prompt and favorable action will be very much appreciated.

Very truly yours, William F. Penniman, President."

Gov. Ex. 341 is a letter from Dr. Eisenman to Mr. Penniman dated November 9, 1937:

"MY DEAR MR. PENNIMAN:

"Acknowledge receipt of your communication under date of November 8, 1937, on the Hospitalization of members of your organization.

Our By-Laws require that all physicians and surgeons, to be eligible to practice in this Hospital, must be appointed by the Board of Directors. The paragraphs of By-Laws applicable to your request are Article VI, Par. 2 and 2-F., and read as follows:

'Par. 2. The Medical Staff shall consist of all those physicians and surgeons who may be appointed by the Board of Directors to serve the Hospital in any professional capacity; and it shall be divided into the following groups:

Par. 2-f. *Courtesy Staff:* Consisting of active practitioners who, being qualified by training and experience to give competent care to their patients in the hospital, have been recommended by the Advisory Committee of the Medical Staff and approved by the Board of Directors.'

I am therefore enclosing herewith application blanks for privilege to practice for such physicians and surgeons as may desire to utilize our facilities.

You state that the Group Health Association will be responsible for the payment of the costs of Hospitalization at customary rates. Our schedule of rates are specified in pamphlet enclosed herewith.

Will be pleased to confer with you at the Hospital any time convenient to you.

Yours very truly, Francis J. Eisenman, M. D., Superintendent."

Gov. Ex. 342 is a letter from Mr. Penniman to Garfield Hospital dated November 11, 1937, attention: Dr. Eisenman, Superintendent.

"GENTLEMEN:

Please accept our thanks for your very prompt and courteous reply to our letter addressed to the Garfield Memorial Hospital, under date of November 8th.

With reference to our request to permit Dr. Raymond E. Selders, Surgeon, attached to the staff of the Group Health Association, to attend patients who are Members of the Association while hospitalized in the Garfield Memorial Hospital, Dr. Selders has completed the application, which you enclosed with your letter, and the same is being returned to you herewith.

Dr. Selders has asked me to say to you that upon approval of his application he will be happy to extend to the

Garfield Memorial Hospital the fullest cooperation in all matters where it is felt that he would be useful.

An early reply will be much appreciated.

Very sincerely yours, William F. Penniman, President."

Gov. Ex. 344 is a letter from Dr. Eisenman, Superintendent of Garfield, to Mr. Penniman dated November 29, 1937:

"My dear Mr. Penniman:

Confirming our conversation of Saturday, November 27th, on the subject of Hospitalization of Patients in Garfield Memorial Hospital, desire to state that our customary rates are as follows:

$4.50 per day for accommodations in a two-bed room, plus all services such as routine laboratory charges, $3.50 for entire stay in Hospital. Use of operating or Delivery Room, $5.00 to $15.00, depending on the nature of care and length of time used and special medicines, dressings, etc. The rate of $4.50 includes meals as ordered by the attending physician, ordinary medicines on ward and divided attention of Staff Nurses and House Staff on duty.

Patients are admitted upon arrangements made with physicians and surgeons privileged to practice. Should any physician or surgeon privileged to practice medicine in the District of Columbia, but not on our Courtesy Staff list, desire to have his, (or her), patient admitted to our hospital in an emergency the patient is accepted. The physician or surgeon is then required to make formal application on blank furnished by the hospital for the continuance of this privilege.

Will be pleased to consider a flat per diem rate, covering everything except special medicines and treatments, anaesthesia, X-Ray, and services of Special Nurses, as soon as I can review the ever changing increased cost of Hospitalization.

Sincerely yours, Francis J. Eisenman, M. D., Superintendent."

Gov. Ex. 345 is a letter from Mr. Penniman to Dr. Eisenman, Superintendent of Garfield Hospital, dated December 2, 1937:

"DEAR DR. EISENMAN:

I acknowledge with pleasure the receipt of your letter of November 29th, confirming our conversation of Saturday, November 27th, on the subject of hospitalization of patients in Garfield Memorial Hospital.

I note that your customary rates are $4.50 per day for accommodations in a two-bed room, plus all services such as routine laboratory charges, $3.50 for entire stay in hospital. Use of operating or delivery room, $5.00 to $15.00, depending on the nature of care and length of time used and special medicines, dressings, etc. Also, that the rate of $4.50 includes meals as ordered by the attending physician, ordinary medicines on ward and divided attention of Staff Nurses and House Staff on duty. I further note, that you will be pleased to consider a flat per diem rate, covering everything except special medicines and treatments, anaesthesia, x-ray, and services of special nurses, as soon as you can review the ever changing increased cost of hospitalization.

In reply, may I say, that until such time as you are in position to give us a flat per diem rate, your customary rates, as stated above are acceptable. I also desire at this time to express my appreciation for your courtesy extended to Dr. Selders, in granting permission to hospitalize and attend an emergency case, several days ago.

I take pleasure in handing you herewith a copy of the By-Laws of the Group Health Association. Your attention is directed to the rate mentioned in these by-laws for hospitalization, which is superseded by the accepted rates named in your letter.

With very kind regards, I am,

Yours very truly, William F. Penniman, President."

Gov. Ex. 346 is a letter from Penniman to Dr. Eisenman, Superintendent of Garfield Hospital, dated December 14, 1937:

"DEAR DR. EISENMAN:

Under date of November 11th, I returned to you the application of Dr. R. E. Selders, Surgeon, attached to the Staff of the Group Health Association, for permission to be placed upon the courtesy staff of the Garfield Memorial Hospital.

If I recall correctly in my interview with you, you stated that this matter had been referred to a special committee. The purpose of my letter at this time, is to inqure if this committee has completed its investigation and whether Dr. Selders has yet been approved.

Your prompt reply will be appreciated.

With my personal regards, I am,

Yours very truly, William F. Penniman, President."

Gov. Ex. 347 is a letter from Dr. Eisenman, Superintendent of Garfield Hospital, to Mr. Penniman dated December 17, 1937:

"My dear Mr. Penniman:

Acknowledge receipt of your letter of December 14, 1937, and in reply beg to state that the application of Dr. Selders was referred by the Committee, on the recommendation of the Surgical Service of the Medical Staff of the Hospital, to the Washington Academy of Surgeons, who I understand had their meeting and considered Dr. Selders application, but have made no report to date.

Will advise you as soon as any definite action has been taken.

Yours very truly, Francis J. Eisenman, M. D., Superintendent."

Gov. Ex. 348 is a letter from Dr. Eisenman to Dr. Raymond E. Selders dated January 25, 1938:

"My dear Dr. Selders:

The Temporary Privileges granted you as a Member of the Courtesy Staff of this Hospital, awaiting action on your application for use of our facilities here, has, I regret to inform you, been withdrawn by the Board of Directors of the Hospital, this date, on the recommendation of the Medical Staff of the Hospital, until such time as the legality of the organization, now before the Courts, has been definitely decided.

Yours very truly, Francis J. Eisenman, M. D., Secretary to the Board."

I think that on January 25, 1938, Dr. Selders was granted temporary privileges at Garfield Hospital for emergency cases.

Gov. Ex. 23 was offered in evidence.

Gov. Ex. 349 is a reply which I received to my letter of November 8. This letter is from W. A. Bloedorn, Medical Director of George Washington University Hospital. Gov. Ex. 350 is a carbon copy of a letter which I sent to George Washington University Hospital dated November 15, 1937. Gov. Ex. 351 is a carbon copy of a letter which I sent to Dr. Bloedorn dated December 14, 1937.

Gov. Exs. 349, 350, 351, 24 and 25 were offered in evidence.

Gov. Ex. 352 is a letter to me from Lewis H. Taylor, President, Sibley Hospital, dated November 10, 1937. This letter is a reply to my letter of November 8. Gov. Ex. 353 is a carbon copy of a letter which I wrote to Dr. Lewis H. Taylor on November 26, 1937. Gov. Ex. 354 is a carbon copy of a letter which I wrote to Dr. Lewis H. Taylor on December 14, 1937. Gov. Ex. 355 is an original letter which I received from Dr. Taylor dated December 18, 1937. Gov. Ex. 356 is a letter which I received from Dr. Taylor dated January 20, 1938. Gov. Ex. 357 is an original letter which I received from Dr. Taylor dated November 17, 1937. Gov. Ex. 358 is a carbon copy of a letter which I received from Dr. Taylor dated November 18, 1937.

Gov. Exs. 27, 352-358, inc., were offered in evidence.

Gov. Ex. 359 is a letter which I received from Mattie M. Gibson, Superintendent, Children's Hospital, dated November 16, 1937, in reply to my letter of November 8. Gov. Ex. 360 is an original letter which I sent to Miss Gibson on November 18, 1937. Gov. Ex. 362 is an original letter which I sent to Miss Gibson, Superintendent of Children's Hospital, on December 14, 1937. Gov. Ex. 363 is a reply from Miss Gibson, dated December 15, 1937. Gov. Ex. 364 is a letter which I sent to Miss Gibson dated December 18, 1937. Attached to this letter is the application of Dr. Raymond E. Selders.

Gov. Exs. 26, 359, 360, 362, 363 and 364 were offered in evidence.

Gov. Ex. 365 is a letter which I wrote to Mr. Henry P. Blair dated November 8, 1937. Mr. Blair is Chairman of the Executive Committee, the Episcopal Eye, Ear, Nose and Throat Hospital. Gov. Ex. 366 is a letter which I received in reply to my letter from Henry P. Blair dated No-

vember 11, 1937. Gov. Ex. 367 is an original letter which I sent to Mr. Blair dated November 18, 1937.

Gov. Exs. 28, 29, 365, 366, and 367 were offered in evidence.

Gov. Ex. 368 is an original letter which I received from B. B. Sandidge, Superintendent, Emergency Hospital, dated November 9, 1937, in reply to my letter of November 8. Gov. Ex. 369 is a carbon copy of a letter which I sent to Central Dispensary and Emergency Hospital dated November 11, 1937. Gov. Ex. 370 is a letter which I received from Gist Blair, President of Emergency Hospital, dated November 15, 1937. Gov. Ex. 371 is a carbon copy of a letter which I wrote to Gist Blair on December 14, 1937. Gov. Ex. 372 is a letter which I received from Gist Blair dated December 17, 1937. Gov. Ex. 373 is a letter which I received from Gist Blair dated December 30, 1937.

Gov. Exs. 368, 369, 370, 371, 372, and 373 were offered in evidence.

The Court thereupon rendered its decision upon the admissibility of certain documents, rulings upon which had been reserved.

Gov. Ex. 71 was admitted in evidence.

The Court ruled that Gov. Exs. 325, 326, 327 and 328 for identification were not admissible. Government counsel limited the offer to show the parties present and their official capacity. It was thereupon ruled that counsel may state these facts to the jury.

Defendants objected to Gov. Exs. 349-373, inc., on the grounds of immateriality, irrelevancy, incompetency, hearsay and that no conspiracy had been shown. Objections overruled and exception noted.

Gov. Exs. 349-373, inc., were admitted in evidence.

Defendants objected to Gov. Exs. 24-30, inclusive, on the grounds of immateriality, irrelevancy, incompetency, hearsay and that no conspiracy had been shown. Objections overruled and exception noted. These documents were admitted to show the fact that these applications were made to the hospital and the action of the hospital with reference thereto.

Gov. Exs. 24-30, inc., were admitted in evidence.

WILLIAM C. KIRKPATRICK, a witness for the United States.

Direct examination.

By Mr. Lewin:

I am employed in the Auditing Division of the Reconstruction Finance Corporation. In 1937 and 1938 I was supervisor of the tax section of HOLC. I became actively interested in Group Health in January, 1937, and became a member. At that time I was Director of the Federal Credit Union in the HOLC and through its activities I became interested in Group Health. I first heard of Group Health from Mr. Zimmerman. I attended the first organization meeting in January, 1937. The organization meeting was held in the Departmental Auditorium; two or three hundred employees of the HOLC were present. The employees were asked if they were interested in forming such an organization. There was quite an unanimous response and everybody seemed interested and wanted to go ahead; I heard no dissents. I was elected Vice-President and Trustee in April of 1937. The Board of Trustees elected me Vice-President and William F. Penniman, President and R. T. Berry as Secretary, C. K. Berlin as Assistant Treasurer. I served as Vice-President until I became President in January, 1938, succeeding Mr. Penniman. When I became President in 1938 there was a continued stalemate in respect to the admission of the members of our staff to courtesy privileges in the Washington hospitals. Approximately 75 elective operations were on the books awaiting hospital treatment. An elective operation is one that may be necessary where the patient elects to have it as distinguished from an emergency operation which must be performed, regardless. Physicians had determined that these operations were necessary some time or other. None of these patients were receiving treatment in the hospitals.

Dr. Brown was the first Medical Director. Dr. Raymond E. Selders, Dr. Stephen Hulbert and Dr. Halstead were on the medical staff when I became President; Dr. Lee had been on the staff and resigned. Part-time men at first were Drs. Scandiffio and Richardson. Compensation for the doctors ranged from $2000 per annum for part-time service to $7200 for full-time service. Dr. Brown was drawing $7200. Dr. Richardson was employed to take care

of house calls because there were so many house calls at the time that it disrupted the operations of the clinic to have doctors called out from their work during the day. Dr. Brown selected every one of the doctors and recommended that they be put on the payroll. Early in 1938 Dr. Scandiffio went on full time at $6000 per annum. Dr. Hulburt started at $2000, was raised to $4800 and resigned in April of 1938. Dr. Frederick Moretti performed eye refractions for $5 each. At the time we entered the arrangement with Dr. Moretti there were about 200 eye refractions awaiting attention, which were worked down and later he was given more. Dr. Moretti was with us six months, until we obtained an eye man, Dr. Virginius Dabney who came in March or April. We also obtained Dr. Halstead who came in the summer of 1938.

We started Group Health with approximately 900 members, all employees of HOLC. On request of the several other Government departments, we threw open the membership list and later on we increased the representation to forty-odd bureaus, agencies and departments here in Washington, which increased the membership to about 2600. We had a limitation of 3300, which we felt we could not exceed safely, because of the limited facilities of the clinic. We never obtained the maximum of 3300. When I became President, I knew Mr. Penniman had been corrsponding with the Washington Hospitals; on assuming office I corresponded with the hospitals.

Gov. Ex. 374 is a letter I sent to Children's Hospital dated February 2, 1938.

Gov. Ex. 374 was offered in evidence.

Defendants objected on the ground that it was incompetent, immaterial, and irrelevant and that no conspiracy had been proven, and that it was hearsay. Objections overruled and exception noted.

Gov. Ex. 374 was received in evidence.

The following exhibits were read to the jury.

Gov. Ex. 27 is a letter from Mr. Penniman to Children's Hospital dated November 8, 1937:

"The Group Health Association, Inc., a mutual, voluntary organization, has been created by the employees of the Federal Home Loan Bank Board and its agencies for the

purpose of providing themselves and dependent members of their families with medical and surgical care and, when necessary, with hospitalization in recognized hospitals of high standing.

As the representative of the Group Health Association, I hereby request the Children's Hospital to admit members of the Group Health Association for customary hospital service upon the request of its Medical Director, Dr. Henry Rolf Brown.

Request is also made to permit Dr. Raymond E. Selders, Surgeon, attached to the staff of the Group Health Association, to attend these patients while hospitalized. For your information, we are attaching hereto a record of Dr. Selders' education, training and experience.

The Group Health Association will be responsible for the payment of the costs of hospitalization at customary rates, in each case for a period limited to 21 days for any one illness for each patient admitted upon the request of the Medical Director.

If you desire further information or a conference with us, we shall be glad to have you let us know. Because of the importance of this request, however, an early and favorable reply will be appreciated.

Very truly yours, Wm. F. Penniman, President."

Gov. Ex. 359 is a letter from Mattie M. Gibson, Superintendent of Children's Hospital, to Mr. Penniman dated November 16, 1937:

"DEAR MR. PENNIMAN:

At a meeting of the Board of Directors of the Children's Hospital, held November 15th, I was authorized to reply to your letter of November 8th, addressed to the Hospital and to Mr. Drayton as President, as follows:

The Children's Hospital will accept for treatment or hospitalization any patient in need of care, under its charter, rules and regulations.

This pertains to indigent, semi-indigent, and a very limited number of pay patients—as we have only twenty-seven beds available for pay patients.

All physicians treating patients while in the hospital must be members of the Medical or Courtesy Staff, appointments to which are made annually by its Board of Directors after

individual examination into the qualifications of applicants by regular hospital channels.

Yours sincerely, Mattie M. Gibson, Superintendent."

Gov. Ex. 360 is a letter from Mr. Penniman to Miss Gibson, Superintendent of Children's Hospital, dated November 18, 1937:

"My dear Miss Gibson:

Please accept our thanks for your very prompt and courteous reply to our letter, addressed to The Children's Hospital, under date of November 8th, in which we requested permission to admit patients who are Members of the Group Health Association, at the request of its Medical Director, Dr. Henry Rolf Brown, also to permit Dr. Selders, Surgeon, attached to the staff of the Group Health Association, to attend these patients while hospitalized.

I note with much pleasure that at the meeting of the Board of Directors of The Children's Hospital, held November 15th, you were authorized to advise that the Children's Hospital will accept for treatment or hospitalization any patient in need of care, under its charter, rules and regulations. I further note that this pertains to indigent, semi-indigent, and a very limited number of pay patients, since there are only 27 beds available for pay patients.

I want you to know, and may I ask that you convey to your Board of Directors, our appreciation for their favorable action on this request.

Relative to our request to permit Dr. Raymond E. Selders, Surgeon, attached to the Staff of the Group Health Association, to attend these patients while hospitalized, we note that all physicians treating patients while in the hospital must be members of the Medical or Courtesy Staff, appointments to which are made annually by its Board of Directors, after individual examination into the qualifications of applicants by regular hospital channels. I assume that the proper procedure would be to have Dr. Selders fill out an application form or questionnaire. If this is the case, would you be good enough to furnish us with the proper form to be used by Dr. Selders in making this application.

With very kind regards, I am, Cordially yours,

Wm. F. Penniman, President."

Gov. Ex. 362 is a letter from Mr. Penniman to Miss Gibson dated December 14, 1937:

"DEAR MISS GIBSON:

You will recall that we wrote to you on November 18th, relative to your letter of November 16th concerning our request to admit patients who are members of the Group Health Association and to permit Dr. Raymond E. Selders, Surgeon, attached to the staff of the Group Health Association to attend these patients while hospitalized.

As stated in our letter of November 18th, we note that all physicians treating patients while in the Children's Hospital must be members of the Medical or Courtesy Staff, appointments to which are made annually by the Board of Directors. We also stated that Dr. Selders will gladly fill out an application form for the consideration of the Board.

As we have not heard further from you we would appreciate knowing what action has been taken thus far on our request. Would you be good enough to favor us with a prompt reply.

Yours very truly, Wm. F. Penniman, President."

Gov. Ex. 363 is a letter from Miss Gibson to Mr. Penniman dated December 15, 1937:

"DEAR SIR:

I regret this delay in replying to your letter of November 18th, as I was led to believe that the forms had been sent to your office, but due to the quite serious illness of Mrs. Tabb, my secretary, it must have been left undone.

I am herewith sending these forms for the use of members of your medical staff.

Sincerely yours, Mattie M. Gibson, Superintendent."

Gov. Ex. 364 is a letter from Mr. Penniman to Miss Gibson, Superintendent of Children's Hospital, dated December 18, 1937:

"MY DEAR MISS GIBSON:

I acknowledge with pleasure the receipt of your letter of December 15th.

Relative to our request to permit Dr. Raymond E. Selders, Surgeon, attached to the Group Health Association, to attend patients who are members of the Group Health Association, while hospitalized in the Children's Hospital, I take

pleasure in handing you herewith application which you forwarded and which has been prepared by Dr. Selders.

He has asked me to say to you that upon approval of his application, he will be happy to extend to the Children's Hospital the fullest cooperation in all matters where it is felt that he or his services would be useful.

Pending such investigation as is found to be necessary, some of the hospitals have been good enough to grant permission to Dr. Selders to treat emergency cases, explaining that this is a customary privilege extended to physicians and surgeons who are duly licensed to practice in the District of Columbia. If this temporary courtesy could be extended to Dr. Selders in the interim period, it would be greatly appreciated.

Thanking you, I am,

Very sincerely yours, Wm. F. Penniman, President."

Gov. Ex. 374 is a letter from Mr. Kirkpatrick to Miss Gibson, Superintendent of Children's Hospital, dated February 2, 1938:

"My Dear Miss Gibson:

This will refer to your letter of December 15, 1937, addressed to Mr. William F. Penniman, and also Mr. Penniman's reply of December 18, 1937, both of which relate to an application of Dr. Raymond E. Selders, a member of the staff of Group Health Association, Inc., for courtesy privileges at The Children's Hospital.

Inasmuch as this matter is one of great importance to us, we will very much appreciate a prompt reply to this letter indicating what action has been taken in the matter of Dr. Selders' application.

Very sincerely yours, W. C. Kirkpatrick, President."

Defendants' objection to Gov. Ex. 375 that it was immaterial, incompetent, irrelevant, hearsay and no conspiracy had been proven was overruled with an exception and it was received in evidence.

Gov. Ex. 375, a letter from Miss Gibson, Superintendent of Children's Hospital, to Mr. Kirkpatrick dated February 3, 1938, was read to the jury as follows:

"Dear Mr. Kirkpatrick:

This refers to your letter of February 2nd regarding Dr. Selders' application for courtesy privileges at this Hospital.

As is our custom, we have referred this matter to the Credentials Committee of our Medical Staff and we shall see that you are promptly informed when that Committee has acted upon Dr. Selders' application.

With all good wishes to you, I am

Sincerely yours, Mattie M. Gibson, Superintendent."

I did not receive any further word or notification from Miss Gibson or the Children's Hospital between that time and July 28, 1938. I wrote again to the hospital on July 28, 1938, and sent a similar letter to substantially all of the other hospitals. Gov. Ex. 376 is a copy of my letter dated July 28, 1938, which I sent to Mr. Drayton, President of the Board of Trustees of Children's Hospital and is similar to the letters I sent to all the other hospitals.

Gov. Ex. 376 was offered in evidence. Defendants objected that it was immaterial, incompetent, irrelevant, and hearsay. Objection overruled and exception noted.

Gov. Ex. 376 was received in evidence.

Gov. Ex. 376, a letter from Mr. Kirkpatrick to Mr. Drayton, President of the Board of Trustees of Children's Hospital, dated July 28, 1938 was read to the jury as follows:

"My dear Mr. Drayton:

In view of Justice Bailey's decision yesterday establishing the legality of Group Health Association, Inc., it is respectfully requested that Dr. Raymond E. Selders, a member of our staff, be admitted to the courtesy staff of Children's Hospital, and that he may attend members of this Association admitted as patients there.

We shall appreciate the courtesy of an early reply.

Very truly yours, W. C. Kirkpatrick, President."

The witness continued:

Justice Bailey is a member of this Court. The decision mentioned is in the Declaratory Judgment suit brought by Group Health in January, 1938, seeking a declaration of whether or not we were a corporation illegally engaged in the practice of medicine and whether we were engaged in the insurance business. Justice Bailey's decision on those questions was favorable to our Association in both instances and generally held that we were not engaged in any way in the practice of medicine and that we were in no way involved in the business of insurance, and the purpose of

Gov. Ex. 376 was to bring Judge Bailey's decision to the attention of the hospitals and in the light of that decision to again renew our pleas for admission of those doctors to those hospitals.

Gov. Ex. 377 is a letter I received from Mr. Drayton in response to my letter of July 28, 1938.

Gov. Ex. 377 was offered in evidence and the defendants objected on the grounds that it was incompetent, immaterial, irrelevant, no conspiracy has been proven, and hearsay. Objection was overruled and exception noted.

Gov. Ex. 377, a letter on the letterhead of Charles D. Drayton dated August 4, 1938, was read to the jury as follows:

"My Dear Mr. Kirkpatrick:

Yours of July 28th has been forwarded to me here.

As soon as our board meets in September I shall take up the question as to what position we should now take respecting Group Health Association, Inc., and advise you on behalf of Children's Hospital. Since the matter is one of great importance and since our position heretofore has resulted from formal action taken by our board, you will understand that I am not able now to announce any change. I trust, therefore, you will allow us sufficient time to reconsider the matter in the light of subsequent developments.

Very truly yours, Charles D. Drayton, President, The Children's Hospital."

Gov. Ex. 378 is a copy of my reply to that letter. Gov. Ex. 379 is a copy of a letter I sent to Mr. Drayton. Gov. Ex. 380 is a copy of a letter I received from Mr. Drayton. Gov. Ex. 381 is a copy of a letter I received from Mr. Drayton.

Gov. Exs. 378, 379, 380 and 381 were offered in evidence. Defendants objected on the ground that they were immaterial, incompetent, irrelevant, no conspiracy had been proven, and hearsay. Objection overruled and exception noted.

Gov. Exs. 378, 379, 380 and 381 were received in evidence.

The following exhibits were read to the jury:

Gov. Ex. 378 is a letter from Mr. Kirkpatrick to Mr. Drayton dated August 6, 1938:

"DEAR MR. DRAYTON:

Thank you very much indeed for your letter of August 4, 1938.

It will be entirely satisfactory to the Association if you will take up at your next Board of Trustees meeting the question of Dr. Selders' admission to the courtesy staff of Children's Hospital.

Very truly yours, W. C. Kirkpatrick, President."

Gov. Ex. 379 is a letter from Mr. Kirkpatrick to Mr. Drayton dated September 16, 1938:

"DEAR MR. DRAYTON:

On August 4, 1938, in response to my letter of July 28, 1938, you were good enough to advise me that the subject matter of my letter would be referred to your Board of Directors some time in September.

I shall appreciate it very much if I may be advised by you whether or not your Board has yet had an opportunity to give consideration to the subject matter of my letter of July 28, 1938.

Very truly yours, W. C. Kirkpatrick, President."

Gov. Ex. 380 is a letter to Mr. Kirkpatrick from Mr. Drayton dated September 19, 1938:

"DEAR MR. KIRKPATRICK:

Replying to yours of September 16th, when I wrote you that The Children's Hospital Board would meet in September, I was under a misapprehension. We have no September meeting, but just as soon as the matter can be given consideration at the October 10th meeting, I will advise you further concerning our position.

Very truly yours, Charles D. Drayton, President."

Gov. Ex. 381 is a letter from Mr. Drayton to Mr. Kirkpatrick dated November 2, 1938:

"DEAR MR. KIRKPATRICK:

I have not been more prompt in replying to your several communications dated July 28 and August 6, 1938, asking that Dr. Raymond E. Selders, a member of your staff, be admitted to the courtesy staff of the Children's Hospital, and that he may attend members of your association ad-

mitted as patients there, for the reason that, in view of the several court proceedings now under way involving Group Health Association, Inc., it did not seem possible for us to give any final answer on any aspect of the controversy.

I believe you have been heretofore furnished with a copy of the memorandum of April 1, 1938, embodying the rule promulgated by our medical staff and adopted by our Board governing admissions to the hospital where an emergency exists and also the attendance upon such children of members of your staff. However, I am enclosing herewith another copy of that memorandum.

Yours very truly, Charles D. Drayton, President."

The memorandum referred to by Mr. Drayton in Gov. Ex. 381 I saw for the first time on the receipt of the letter. I don't know of any other court proceedings at the time of the letter. There was a bill in equity filed by certain members of the District Medical Society to enjoin us from operating involving substantially the same grounds that were involved in the suit for Declaratory Judgment, namely, that we were a corporation illegally engaged in the practice of medicine and that we were in the insurance business. When the letter of November 2, 1938 (Gov. Ex. 381) was written grand jury proceedings also were pending. Group Health doctors were never admitted to Children's Hospital during the period I was president down to December 20, 1938. Gov. Ex. 381 is the last communication I received from Mr. Drayton.

I sent Columbia Hospital a letter similar to my letter of February 2, 1938, to Children's Hospital.

Mr. Lewin: All right. Now, I won't bother to read that, then.

The Court: No, Gentlemen, where the letter is similar or substantially similar, I think we may group them, may we not, merely by that identification. You may check up and see, if you wish.

Mr. Lewin: Yes.

The Court: That will save reading.

Gov. Ex. 383 was offered in evidence with the statement that it is substantially similar to the letter sent Children's

Hospital. The objection of the defendants that it was incompetent, irrelevant, immaterial, no conspiracy had been proven, and hearsay, was overruled and exception noted.

Gov. Ex. 383 was received in evidence.

Gov. Ex. 382 is a reply which I received to Gov. Ex. 383.

Gov. Ex. 382 was offered in evidence. Defendants objected on the grounds of incompetency, irrelevancy, and immateriality, no conspiracy had been proven and hearsay. This objection was overruled and exception noted.

Gov. Ex. 382 was received in evidence.

Gov. Ex. 382, a reply from P. M. Ashburn, the Superintendent of Columbia Hospital, to Mr. Kirkpatrick's letter of February 2, 1938, was read to the jury as follows:

"MY DEAR MR. KIRKPATRICK:

Replying to your inquiry of yesterday, I have the honor to inform you that the Medical Board of this hospital held no meeting in December and that at its January meeting it failed to act on Dr. Selders' application for courtesy privileges. Consequently, it has made no recommendation in the matter to the Board of Directors, and Dr. Selders' status in relation to this hospital remains unchanged.

Very sincerely yours, P. M. Ashburn."

I wrote a letter identical to the letter which I sent to Children's Hospital to Capt. Chester Wells of Columbia Hospital in regard to Judge Bailey's decision. This is Gov. Ex. 384.

Gov. Ex. 384 was received in evidence but was not read as it was similar to another exhibit.

Gov. Ex. 385 is a letter from Capt. Wells to Mr. Kirkpatrick dated August 20, 1938, and is in reply to my letter of July 28. Gov. Ex. 386 is a letter which I sent to Capt. Wells. Gov. Ex. 386 was produced from the files of the Columbia Hospital.

Gov. Exs. 385, 386 and 387 were offered in evidence. The defendants objected on the grounds of incompetency, irrelevancy, immateriality, no conspiracy had been proven and hearsay. This objection was overruled and exception noted.

Gov. Exs. 385, 386 and 387 were received in evidence.

The following exhibits were read to the jury:

Gov. Ex. 385 is a letter from Wells to Kirkpatrick dated August 20, 1938:

"My dear Mr. Kirkpatrick:

Your letter of July 28th has just come to my attention, as I have been out of the country since the middle of June.

Although Group Health Association is not an organization with which this hospital can deal in the matter of granting privileges to Doctors, with whom it deals directly, I do not mind informing you that no action has ever been taken upon Dr. Selders' application for courtesy privileges here because the Medical Board, upon whose advice the Board of Directors relies for decision as to the professional qualifications of applicants for privileges, has not made a recommendation as to all classes of the privileges sought by Dr. Selders, and the Board of Directors has been unwilling to act upon only a part of his application. Meanwhile he has had temporary privileges for normal obstetrical cases but has not used them.

On April 23rd he withdrew his application for privileges in pathological obstetrics.

It is expected that the Medical Board will make a recommendation as to Dr. Selders at the time of its next meeting, on September 8th, and that the Board of Directors can act upon it at its meeting on September 21st.

Meanwhile, I invite your attention to the fact that numbers of your members have been hospitalized here and treated, presumably, by physicians of their own choice, and that the Association has assumed responsibility for their hospital bills, but has not yet paid them.

Will you be so good as to expedite the payment of these bills?

Very truly yours, Chester Wells, President."

Gov. Ex. 386 is a letter from Kirkpatrick to Capt. Wells dated August 25, 1938:

"Dear Mr. Wells:

Thank you very much indeed for your letter of August 20, 1938.

We are pleased to note that Dr. Selders' application for admission to the Courtesy Staff at Columbia Hospital for

Women will be considered by your Medical Board on September 8 and by your Board of Directors on September 21.

I was not aware that there were any bills yet in our possession owing to Columbia Hospital For Women for which this Association is liable. I have already asked our Administrator to expedite payment of these bills and appreciate your calling this matter to my attention.

Very truly yours, W. C. Kirkpatrick, President."

Gov. Ex. 387 is a letter from Ashburn to Dr. Raymond E. Selders dated April 19, 1938:

"DEAR DR. SELDERS:

The Medical Board of this hospital has considered your application for courtesy privileges in Classes 1, 2, and 3, and does not feel that you have submitted evidence of that special training and skill habitually required of applicants for the privileges which you seek.

Will you therefore kindly submit any additional evidence at your disposal tending to show your skill in obstetrics and gynecology.

Very sincerely yours, P. M. Ashburn, Secretary, Medical Board."

Gov. Ex. 389, which is a letter from Dr. Selders to the superintendent of Columbia Hospital dated September 2, 1938, and obtained from the files of the Columbia Hospital under subpoena, was offered in evidence. The objection of the defendants, of incompetency, irrelevancy, immateriality, no conspiracy proven, and hearsay, was overruled and exception noted. Gov. Ex. 389 was received in evidence and read to the jury as follows:

"Colonel P. M. Ashburn, Superintendent, Columbia Hospital for Women.

DEAR COLONEL ASHBURN:

Pursuant to our telephone conversation of yesterday, I am writing this letter in request for certain hospital privileges in the Columbia Hospital for Women as defined and outlined below:

First, I request permission to attend normal obstetrical deliveries. My training and experience in this work is as follows:

. . . . . .

Second, I wish to renew my request for permission to do major surgery in the Columbia Hospital for Women.

I should like to have each of the above requests acted upon separately and independently by those in charge.

My references are already on file in your office.

Respectfully, Raymond E. Selders, M.D."

After August 20, 1938, I did not receive any further communication from Columbia Hospital or from Capt. Wells or Col. Ashburn. No doctor on the staff of Group Health was ever admitted to Columbia Hospital between that time and the date of the indictment.

Gov. Ex. 390 is a letter which I wrote to Gist Blair, President of Emergency, dated February 2, 1938. Gov. Ex. 391 is Major Blair's reply to my letter of February 2, 1938. Gov. Ex. 393 is a copy of my letter to Mr. Blair dated July 28, 1938. Gov. Ex. 394 is the reply which I received from B. B. Sandidge, Superintendent of Emergency Hospital, dated July 28, 1938. Gov. Ex. 395 is my letter to Major Blair dated September 16, 1938.

Gov. Exs. 390, 391, 393, 394 and 395 were offered in evidence. Defendants objected on the grounds that they were incompetent, immaterial, irrelevant, no conspiracy had been proven, and hearsay. Objection was overruled and exception noted.

Gov. Exs. 390, 391, 393, 394 and 395 were received in evidence.

Gov. Ex. 28 is a letter from Mr. Penniman to Emergency Hospital dated November 8, 1938. Being substantially identical with the other letters which Mr. Penniman wrote to the Washington hospitals on that date it was not read to the jury.

Gov. Ex. 29 is a letter from Mr. Penniman to Major Gist Blair dated November 8, 1938. This letter being similar to other letters which Mr. Penniman wrote on the same date to the Washington hospitals, it was not read to the jury.

The following exhibits were read to the jury:

Gov. Ex. 368 is a letter from B. B. Sandidge, Superintendent of Emergency Hospital, to Mr. Penniman dated November 9, 1937:

"Mr. William F. Penniman, President, Group Health Association.

DEAR SIR:

We acknowledge receipt of your communication of the 8th instant, requesting that this hospital admit members of the Group Health Association for customary hospital service upon the request of its Medical Director, Dr. Henry Rolf Brown, and under the services of Dr. Raymond E. Selders, Surgeon, attached to the Staff of Group Hospitalization Association, with enclosure of record of Dr. Selders' qualifications.

We beg to advise that we shall be most happy to place your letter before the authorities of the hospital, who are authorized to pass upon matters of this kind, for their consideration.

Very truly yours, Emergency Hospital, B. B. Sandidge, Superintendent."

Gov. Ex. 369 is Mr. Penniman's reply dated November 11, 1937, to Emergency Hospital, attention B. B. Sandidge, Superintendent:

"GENTLEMEN:

Please accept our thanks for your very prompt and courteous reply to our letter addressed to Emergency Hospital, under date of November 8th.

We note with pleasure your statement that you will be pleased to place our letter before the authorities of the hospital, who are authorized to pass upon matters of this kind, for their consideration.

We trust that our request will be given prompt and favorable consideration and that we may have the pleasure of hearing from you at an early date.

Sincerely yours, William F. Penniman, President."

Gov. Ex. 370 is Major Gist Blair's reply to Mr. Penniman dated November 15, 1937:

"MY DEAR MR. PENNIMAN:

Replying to your letter of November 8th, requesting permission to admit patients who are members of Group Health Association, 'upon the request of the Medical Director', and saying that Dr. Raymond E. Selders is on the staff of

Group Health Association, I beg to say that Emergency Hospital has adopted, by its rules, a so-called Courtesy List of physicians who are subject to the control of our Staff under practically all conditions.

This Courtesy List is based upon certain fundamentals requisites, laid down by our Staff, and, while I have every friendly wish toward some of your objects, and feel satisfied that the Executive Committee and Board of this Hospital are in many ways sympathetic with the purposes of your organization providing medical and surgical care, and, when necessary, hospitalization in recognized hospitals of high standing, we do not feel at present that we can make any changes in our rules. This hospital, as are other hospitals in this city, is open to the reception of all patients.

Dr. Selders or other representatives of Group Health Association must first be placed on our Courtesy List before they can treat patients in this hospital. Your letter and Dr. Selders' credentials have been referred to the proper authorities."

Gov. Ex. 371 is a letter from Mr. Penniman to Mr. Blair dated December 14, 1937:

"DEAR MR. BLAIR:

Under date of November 15th, you acknowledged receipt of our letter dated November 8th and advised us that Dr. Raymond E. Selders or other representatives of the Group Health Association must first be placed on your courtesy list before they could treat patients in the Emergency Hospital.

As you stated that our letter together with Dr. Selders' credentials have been referred to the proper authorities, would you be good enough to inform us whether or not those authorities have as yet had an opportunity to take action on the matter.

It would be deeply appreciated if you would immediately notify us in order that we might know of the status of this matter.

Yours very truly, William F. Penniman, President."

Gov. Ex. 372 is a letter from Major Blair to Mr. Penniman dated December 17, 1937:

"DEAR SIR:

Replying to your letter of December 14th, with reference to action of the hospital authorities upon Dr. Selders' ap-

plication for courtesy privileges at this institution, I beg to advise that our Executive Staff has not yet held a meeting, and as soon as this is done, you will be advised accordingly.

Very truly yours, Gist Blair, President."

Gov. Ex. 373 is a letter from Major Blair, President of Emergency Hospital, to Mr. Penniman dated December 30, 1937:

"DEAR MR. PENNIMAN:

With further reference to your communications, requesting that Emergency Hospital furnish hospitalization to patients who are members of Group Health Association, Inc., I beg to advise that there can be no question about Emergency Hospital offering its services to any patient, regardless of color, race or creed, and its doors are open twenty-four hours every day throughout the year.

However, as is consistent with every well regulated hospital, and in conformity with the rules of the American College of Surgeons, the Emergency Hospital does undertake to exercise authority and care to see that physicians, who are granted the privilege to treat patients on its premises, are qualified in every respect in their particular branch of the profession and are so recognized by the medical profession.

In accordance with this idea, and in order to safeguard the patient, the Board of Directors, at its regular meeting, held April 17th, 1936, unanimously adopted a resolution, providing that any physician who desires to treat patients in Emergency Hospital must make formal application, that his professional qualifications must be satisfactory to the professional staff, and as an index of his professional training and integrity that he must be a member in good standing of the District of Columbia Medical Society.

The Emergency Hospital will be glad to have any physician make application for courtesy privileges, and if his qualifications meet our requirements, I feel sure that all privileges will be extended to him.

Since DR. SELDER'S application does not meet these requirements, the Board has not seen fit to grant him the privileges which he requested.

Very truly yours, Emergency Hospital, Gist Blair, President."

Gov. Ex. 390 is a letter from Mr. Kirkpatrick to Mr. Blair dated February 2, 1938,

"My dear Mr. Blair:

This will refer to your letter of December 30, 1937, addressed to Mr. William F. Penniman, relating to an application of Dr. Raymond E. Selders for membership on the courtesy staff of your hospital.

It is the desire of the Board of Trustees of Group Health Association, Inc., to discuss the subject matter of your letter with the Board of Trustees of Central Dispensary and Emergency Hospital and to that end it is respectfully requested that representatives of Group Health Association, Inc., be accorded an opportunity to meet with your Board of Trustees at a time and place most convenient to them.

The matter we wish to discuss is of great importance to this Association and we feel also to Central Dispensary and Emergency Hospital. To the end that we may have a complete understanding of the problems involved between both parties it will be greatly appreciated if the request made above may be granted.

We will consider it a very great favor if we may have a prompt reply to this letter.

Very sincerely yours, W. C. Kirkpatrick, President."

Gov. Ex. 391 is a letter from Major Blair to Mr. Kirkpatrick dated February 3, 1938:

"My dear Mr. Kirkpatrick:

Your letter of February 2d has been received, and today the same was brought to the attention of the Executive Committee at its regular session at the hospital, and by resolution the Committee authorized Dr. James F. Mitchell and myself to confer with you or any member of your Board of Trustees, and if you will telephone the Superintendent at this hospital, and have arrangements made which will be convenient to Dr. James F. Mitchell, who is very much occupied, and myself, we will be glad to meet you.

In your letter, relating to Dr. Raymond E. Selders, you suggest that your Board of Trustees meet with our Board of Trustees, and I would suggest that this is not practical since our Board of Trustees will not meet for several months, and matters of this kind are referred to our Execu-

tive Committee to decide what is advisable for the hospital to do under the circumstances.

Very truly yours, Gist Blair, President."

As a result of the communications which have just been read in evidence, I had a conference with Major Blair, President of the Board of Trustees of Emergency Hospital and Dr. Mitchell. This conference was held in Major Blair's office. Mr. Sandidge and Mr. Horace Russell, General Counsel of HOLC and a trustee of Group Health were present.

The following exhibits were read to the jury:

Gov. Ex. 393 is a letter from Mr. Kirkpatrick to Mr. Blair, President of the Board of Trustees of Emergency Hospital, dated July 28, 1938. This letter is identical with the other letters written by Mr. Kirkpatrick referring to the Bailey decision and for that reason was not read.

Gov. Ex. 394 is a letter from B. B. Sandidge, Superintendent of Emergency Hospital, to Mr. Kirkpatrick dated July 28, 1938:

"My dear Mr. Kirkpatrick:

I beg to acknowledge receipt of your letter of July 28, addressed to Major Gist Blair, President of the Board of Trustees, in which you request that Dr. Raymond E. Selders be admitted to the courtesy staff of this institution, and to further advise you that Major Blair is out of the city, and that I shall be glad to present your communication to him just as soon as he returns.

Very truly yours, B. B. Sandidge."

Gov. Ex. 395 is a copy of a letter from Mr. Kirkpatrick to Mr. Blair dated September 16, 1938:

"Dear Mr. Blair:

On July 28, 1938, Mr. B. B. Sandidge, Superintendent of Central Dispensary and Emergency Hospital, advised me, in response to my letter to you of July 28, 1938, that you were at that time out of the city and that my letter would be referred to you upon your return.

It will be very much appreciated if I may have a reply to my letter of July 28, 1938.

Very truly yours,"

I never received a reply from Mr. Blair to my letter of July 28, 1938, or my letter of September 16, 1938. The doctors of Group Health were never admitted to Emergency Hospital's courtesy staff during the year 1938. Gov. Ex. 396 and 397 are copies of letters which I wrote.

Gov. Exs. 396 and 397 were offered in evidence. Defendants objected on the grounds that they were incompetent, irrelevant, immaterial, no conspiracy had been proven, and hearsay. This objection was overruled and exception noted.

Gov. Exs. 396 and 397 were received in evidence.

Gov. Ex. 26 is a carbon copy of a letter from Mr. Penniman to Episcopal Eye, Ear and Throat Hospital dated November 8, 1937. This letter is similar to the others sent to the various hospitals and for this reason was not read to the jury. Gov. Ex. 365 is a letter from Mr. Penniman to Mr. Henry Blair dated November 8, 1937, enclosing a copy of the letter which he addressed to the Episcopal Eye, Ear, Nose and Throat Hospital. It is substantially similar to the other letters written on that date, and for this reason was not read to the jury.

The following exhibits were read to the jury:

Gov. Ex. 366 is a letter from Henry P. Blair, First Vice-President of Episcopal Hospital, dated November 11, 1937, and addressed to William Penniman:

"DEAR SIR:

In reply to your recent letter addressed to the Episcopal Eye, Ear and Throat Hospital I beg to advise you that the Hospital is always open for admission of patients along lines of its specialized work in accordance with its rules and regulations. There would seem to be no reason why any request received from Dr. Brown should not be honored. I am quite sure that patients will be thus admitted on the responsibility of Group Health Association for the costs of hospitalization at our customary rates for similar accommodations in the Hospital and for the period of twenty-one days as indicated by your letter.

In regard to the admission of physicians or surgeons to practice on our Staff it will be necessary that the By-Laws of the institution be followed which provide for recommen-

dation of the applicant by our Medical Staff and confirmation and appointment by the Board of Governors.

I will be very glad to consult with you further in regard to this matter and of course realize you will note that the character of work of our Hospital is along specialized lines.

Very truly yours, Henry P. Blair, First Vice President."

Gov. Ex. 367 is a letter from Mr. Penniman to Mr. Henry Blair dated November 18, 1937:

"DEAR MR. BLAIR:

Please accept our thanks for your very prompt and courteous reply to our letter, addressed to the Episcopal Eye, Ear and Throat Hospital, under date of November 8th, requesting permission to admit patients who are members of the Group Health Association for customary hospital service upon the request of its Medical Director, Dr. Henry Rolf Brown.

I note with pleasure your statement that there would seem to be no reason why any request received from Dr. Brown should not be honored.

With reference to the admission of Surgeons or Physicians to practice on your staff, I recognize that the character of the work of your hospital is along specialized lines and I shall be very happy to consult with you further in respect to this matter.

With very kind regards, I am,

Sincerely yours, William F. Penniman, President."

Gov. Ex. 396 is a letter from Mr. Kirkpatrick to Mr. Henry Blair dated July 28, 1938:

"MY DEAR MR. BLAIR:

In view of Justice Bailey's decision yesterday establishing the legality of Group Health Association, Inc., it is respectfully requested that Dr. Virginius Dabney, a member of our staff, be admitted to the courtesy staff of Episcopal Eye, Ear and Throat Hospital, and that he may attend members of this Association admitted as patients there.

We shall appreciate the courtesy of an early reply.

Very truly yours, —— ——, President."

Gov. Ex. 397 is a letter from Mr. Kirkpatriek to Mr. Henry Blair dated September 16, 1938:

"Dear Mr. Blair:

On July 28, 1938, the writer addressed a letter to you requesting admission to your Courtesy Staff of Dr. Virginius Dabney. At this writing we have not received a reply to our letter and we would aprpeciate it very much if we might have some word from you with respect to the question.

Very truly yours, W. C. Kirkpatrick."

I never received any replies from Episcopal Hospital or Mr. Blair to either of my letters dated July 28 and September 16, 1938. I never had any further word from them down to the date of the indictment. In the spring of 1938, 50 or 60 Group Health patients were treated at the Episcopal Hospital by Dr. Dabney. I was never successful in getting the doctors of Group Health to be able to treat Group Health patients as such in the Episcopal Hospital.

Gov. Exs. 398 and 399 are copies of letters which I wrote. Gov. Ex. 400 is a letter which I received from Dr. Bloedorn.

Gov. Exs. 398, 399 and 400 were offered in evidence. Defendants objected on the grounds that they were incompetent, irrelevant, immaterial, no conspiracy had been proven, and hearsay. Objection was overruled and exception noted.

Gov. Exs. 398, 399 and 400 were received in evidence.

Gov. Ex. 23 is a letter from Mr. Penniman to the George Washington University Hospital dated November 8, 1937. This letter is similar to the letters sent to the other hospitals on that date and for this reason was not read to the jury.

Gov. Ex. 349, a letter from Dr. Bloedorn to Mr. Penniman dated Nov. 11, 1937, was read to the jury as follows:

"Dear Mr. Penniman:

Receipt is acknowledged of your letter of November 8th, requesting permission for Dr. Raymond E. Selders, attached to the Staff of the Group Health Association, for hospital privileges in the George Washington University Hospital.

I am enclosing herewith a blank form which all applicants for hospital privileges are requested to fill in.

These applications are then presented at our Staff Conferences and referred to the Committee on Hospital Privileges.

Very truly yours, W. A. Bloedorn, M. D., Medical Director."

Gov. Ex. 350, a letter from Mr. Penniman to Dr. Bloedorn, Medical Director of the George Washington University Hospital, dated November 15, 1937, was read to jury as follows:

"GENTLEMEN:

Please accept our thanks for your very prompt and courteous reply to our letter addressed to the George Washington University Hospital, under date of November 8th.

With reference to our request to permit Dr. Raymond E. Selders, Surgeon, attached to the staff of the Group Health Association, to attend patients who are Members of the Association while hospitalized in the George Washington University Hospital, Dr. Selders has completed the application which you enclosed with your letter, and the same is being returned to you herewith.

Dr. Selders has asked me to say to you that upon approval of his application he will be happy to extend to the George Washington University Hospital the fullest cooperation in all matters where it is felt that he would be useful.

An early reply will be much appreciated.

Very sincerely yours, William F. Penniman, President."

Gov. Ex. 398 is a carbon copy of a letter from Mr. Kirkpatrick to George Washington University Hospital dated February 2, 1938. This letter renews the request and is similar to the letters to the other hospitals written on this date and for this reason was not read to the jury. Gov. Ex. 399 is a letter from Mr. Kirkpatrick to George Washington University Hospital dated July 29, 1938, referring to Justice Bailey's decision establishing the legality of Group Health Association and renewing the request for the admission of GHA doctors to the Washington hospitals. This letter is similar to the others of this same date and was not read to the jury.

Gov. Ex. 400, a letter from Dr. Bloedorn to Mr. Kirkpatrick dated September 24, 1938, was read to the jury as follows:

"DEAR MR. KIRKPATRICK:

The application of Dr. Raymond E. Selders has been referred again to our Committee on Hospital privilege for the Committee's recommendation.

Sincerely yours, Walter A. Bloedorn, M. D., Acting Dean."

Gov. Ex. 400 was the last letter which I received from George Washington University Hospital or from Dr. Bloedorn. No doctor attached to Group Health Association or on its staff was ever admitted to courtesy privileges at the George Washington Hospital.

Early in 1938 I attempted to obtain courtesy staff privileges for Group Health doctors at Casualty Hospital. Gov. Ex. 401 bears the signature of Dr. Selders. Gov. Ex. 402 is a copy of a letter which I wrote. Gov. Ex. 403 is a reply which I received to Gov. Ex. 402. Gov. Ex. 404 is a letter I received from Casualty Hospital. Gov. Ex. 405 is a copy of a letter which I wrote. Gov. Ex. 406 is a letter which I received from Casualty Hospital. Gov. Ex. 407 is a copy of a letter which I wrote.

Gov. Exs. 401-407, inclusive, were offered in evidence. Defendants objected on the grounds that they were irrelevant, incompetent, immaterial, no conspiracy had been proven, and hearsay. Objection was overruled and exception noted.

Gov. Exs. 401-407 were received in evidence.

Gov. Ex. 401, a letter from Dr. Selders, Acting Medical Director of Group Health, to Casualty Hospital, dated April 20, 1938, was read to the jury as follows:

"DEAR DR. BRADEN:

I have received, filled out, and I enclose herewith the two application blanks for admission to the courtesy staff of the Casualty Hospital.

In event that any additional information is desired, I shall be very glad to supply it.

Yours very truly, Raymond E. Selders, M. D., Acting Medical Director."

Dr. Selders became the Acting Medical Director of Group Health in the early part of 1938 during Dr. Brown's illness.

Dr. Brown did not return as Medical Director after his illness was over. He resigned on the 15th of April and Dr. Selders became Medical Director. Dr. Selders continued as Medical Director throughout the rest of 1938.

Gov. Ex. 402, a letter from Mr. Kirkpatrick to Dr. Harry F. Allmond, Secretary, Board of Directors, Casualty Hospital, dated June 7, 1938, was read to the jury as follows:

"DEAR DR. ALLMOND:

It will be appreciated if you will consider this a formal request to admit to the services of the Casualty Hospital members of Group Health Association, Inc., and also to admit to the courtesy staff of Casualty Hospital members of the medical staff of this Association.

Any information you may require concerning the experience and qualifications of any of our staff will be readily furnished upon your request.

This Association now has a membership of approximately 2,700 persons who with their families and dependents number between 5,500 and 6,000 persons we are endeavoring to serve.

We shall consider it a great favor if you will present this matter to your Board of Directors and advise the writer of its action.

Very truly yours, W. C. Kirkpatrick, President."

In the spring of 1938 I sought an interview with officials of the Casualty Hospital. I was accompanied by Ormand Loomis, Executive Assistant of the Home Owners' Loan Corp. and a trustee of Group Health. We met with Mr. Rogers, Mr. Baker, the treasurer and a director and Miss Rogers, the superintendent of the hospital, and Dr. Richard Young, Chief of the medical staff. The purpose of this meeting was to discuss the admission of members of our staff to the courtesy staff at Casualty Hospital.

The following exhibits were read to the jury:

Gov. Ex. 403 is a letter from S. H. Rogers, President, Board of Directors, Casualty Hospital, to Mr. Kirkpatrick, dated August 2, 1938:

"DEAR MR. KIRKPATRICK:

I wish to acknowledge your favor of the 28th, ultimo, in regard to admission of Dr. Raymond E. Selders to our Courtesy Staff.

As the recommendation of our Medical Staff in regard to Dr. Selders was made without consideration of the question of the legality of your organization, it is my personal opinion that Justice Bailey's decision will make no difference; however, if Dr. Selders will submit a new application for the Courtesy Staff, I will forward it to our Medical Staff requesting them to take into consideration all new developments so that their recommendations will be ready for the action of our Board of Directors at its next meeting, which is Tuesday, September 13, 1938.

Very truly yours, S. H. Rogers, President, Board of Directors, Eastern Dispensary and Casualty Hospital."

Gov. Ex. 404 is a letter from E. M. Rogers, Superintendent of Casualty Hospital, to Mr. Kirkpatrick dated August 5, 1938:

"DEAR SIR:

In accordance with your request we are enclosing herewith the application blanks for Dr. Selders. Upon the return of the blanks, they will be forwarded to the Medical Staff for action.

Very truly yours, E. M. Rogers, Superintendent, Eastern Dispensary and Casualty Hospital."

Gov. Ex. 405 is a carbon copy of a letter from Mr. Kirkpatrick to Mr. S. H. Rogers, President, Board of Directors, Casualty Hospital, dated August 12, 1938:

"DEAR MR. ROGERS:

In response to your letter of August 2, 1938, there is enclosed an application executed by Dr. Raymond E. Selders for admission to the courtesy staff of your hospital.

I shall appreciate receiving word from you when this matter has been acted on by your Board of Directors at its next meeting, Tuesday, September 13, 1938.

Very truly yours, W. C. Kirkpatrick, President."

Gov. Ex. 406 is a letter from President Rogers of Casualty to Mr. Kirkpatrick dated September 14, 1938:

"DEAR MR. KIRKPATRICK:

Referring to my letter of August 2nd and Dr. Selders' application for membership to our Courtesy Staff, at our

Board Meeting I last night learned for the first time that the Medical Staff had recessed its meetings for three months during the summer and did not hold its regular meeting September 1st, so we had no recommendation from them on Dr. Selders' application to act upon.

I was misinformed on this subject when I wrote you as of August 2nd and regret that my letter was misleading as to the time we would act upon Dr. Selders' application.

Very truly yours, S. H. Rogers, President Board of Directors. Eastern Dispensary and Casualty Hospital."

Gov. Ex. 407 is a carbon copy of a letter from Mr. Kirkpatrick to Mr. S. H. Rogers, President, dated September 15, 1938:

"Dear Mr. Rogers:

Thank you very much indeed for your letter of September 14, 1938.

We are hopeful that your medical staff will soon be in a position to report favorably to your Board concerning Dr. Raymond E. Selders' application for admission to the Courtesy Staff of your hospital.

We shall appreciate receiving word from you when action has been taken.

Very truly yours, W. C. Kirkpatrick, President."

After September 15, 1938, I did not receive any further word from Mr. Rogers or from the Casualty Hospital. No Group Health doctors were ever admitted to the courtesy staff of Casualty Hospital.

Gov. Ex. 408 is a copy of a letter which I wrote. Gov. Ex. 409 is a copy of a letter which I received. Gov. Ex. 410 is a copy of a letter which I wrote. Gov. Ex. 412 is a letter which I received. Gov. Ex. 413 is a letter which I wrote. Gov. Ex. 414 is a letter which I received. Gov. Ex. 415 is a copy of a letter which I wrote. Gov. Ex. 416 is a letter which I received. Gov. Ex. 417 is a letter which I received from Dr. Taylor, President of Sibley Hospital. Gov. Ex. 418 is a letter which I wrote. Gov. Ex. 419 is a letter which I received. Gov. Ex. 420 is a letter signed by Mr. Berry, Secretary-Treasurer of Group Health, addressed to Dr. Taylor. Gov. Ex. 421 is a letter which I received from Dr. Taylor of Sibley. Gov. Ex. 422 is a copy of a let-

ter which I wrote. Gov. Ex. 423 is a letter which I received from Miss Taylor Owen, a member of Group Health Association and a patient at Sibley Hospital. Gov. Ex. 424 is a copy of a letter which I wrote. Gov. Ex. 425 is a letter which I received from Miss Owen. This letter purports to be a letter from Dr. Taylor to Miss Owen.

Gov. Exs. 408, 409, 410, 412-425, inclusive, were offered in evidence. Defendants objected to Gov. Exs. 408, 409, 410, 412-425, inclusive, on the grounds that they were incompetent, immaterial, irrelevant, no conspiracy had been proven, and hearsay. Objection overruled and exception noted except that ruling was reserved upon Gov. Exs. 417-425, inclusive.

Gov. Exs. 408, 409, 410, 412-416, inclusive, were received in evidence.

Gov. Ex. 426 is a letter which was turned over to me by Mr. Howard F. Vickery, a member of Group Health Association who was hospitalized at Sibley Hospital. Gov. Ex. 427 is a copy of my letter to Dr. L. H. Taylor, President of Sibley Hospital, dated August 5, 1938. Gov. Ex. 428 was delivered to me by Mr. Vickery. Gov. Ex. 429 is a copy of my letter to Dr. L. H. Taylor, President of Sibley Hospital, dated August 18, 1938. Gov. Ex. 430 is a letter which I received from Mr. Vickery.

Gov. Exs. 426-430 were offered in evidence. Defendants objected to these documents on the ground that they were incompetent, immaterial, irrelevant, that no conspiracy had been proven, and that they were hearsay. Ruling reserved.

Gov. Ex. 24 is a letter from Mr. Penniman to Sibley Hospital dated November 8, 1937. This letter is similar to ones which have been read and for that reason was not read to the jury. Gov. Ex. 25 is a letter from Mr. Penniman to Dr. Taylor, President of Sibley Hospital, dated November 8, 1937. This letter is similar to those which have been read and for this reason was not read to the jury.

The following exhibits were read to the jury.

Gov. Ex. 352 is a letter from Dr. Taylor to Mr. Penniman dated November 10, 1937:

"My dear Mr. Penniman:

I am in receipt of your letter of November 8, 1937, relative to the admission of members of the Group Health Association to Sibley Memorial Hospital, upon the request of

your Medical Director, Dr. Henry Rolf Brown. Also, requesting permission for Dr. Raymond Selders to attend these patients while hospitalized here. Your letter to the hospital containing the same request will be submitted to the Board of Directors of this institution at their next meeting which will be held Tuesday, November 16, 1937.

Sibley Hospital is a privately owned and non-profit institution having no governmental connection, and receives no aid from the Community Chest. Under its present rules and regulations all patients are admitted on the service of some physician to whom the use of the hospital privileges has been accorded. Physicians desiring to treat patients in this institution fill out a questionnaire stating the kind of cases they desire to treat and submitting data showing their abilities and experience qualifying them for such privileges. This questionnaire, upon its completion, is returned to the hospital by the applicant and is passed upon by the Medical Council and its recommendations, favorable or otherwise, are submitted to the Board of Directors. The Board either grants or rejects the applicant's request. I am enclosing a questionnaire which Dr. Selders may fill out, if he so desires.

Trusting that I have given you the information desired in your letter to me, I am,

Very sincerely yours, Lewis H Taylor, M. D., President."

Gov. Ex. 353 is a letter from Mr. Penniman to Dr. Taylor, President of Sibley Hospital, dated November 26, 1937:

"My dear Dr. Taylor:

With further reference to your letter to me under date of November 10th, which was in answer to my letter addressed to Sibley Memorial Hospital under date of November 8th, and your further letter of November 17th, I take pleasure in handing you herewith the application which you enclosed and which has been prepared by Dr. Raymond E. Selders, Surgeon, attached to the Staff of the Group Health Association.

Dr. Selders has asked me to say to you that upon approval of his application, he will be happy to extend the Sibley Memorial Hospital the fullest cooperation in all matters where it is felt that he or his services would be useful.

Because of the extreme urgency of this matter, we are hopeful of a prompt and favorable action on Dr. Selders' application.

Very truly yours, William F. Penniman, President."

Gov. Ex. 354 is a letter from Mr. Penniman to Dr. Taylor, President of Sibley Hospital, dated December 14, 1937:

"DEAR DR. TAYLOR:

Under date of November 26th I returned to you the application of Dr. Raymond E. Selders, Surgeon, attached to the staff of the Group Health Association for permission to be placed upon the courtesy staff of the Sibley Memorial Hospital.

Would you be good enough to inform us whether or not the Board of Directors has as yet had an opportunity to render a decision on Dr. Selders' application.

Your prompt reply will be appreciated.

Yours very truly, William F. Penniman, President."

Gov. Ex. 355 is a letter from Dr. Taylor, President of Sibley to Mr. Penniman, dated December 18, 1937:

"MY DEAR MR. PENNIMAN:

I wish to acknowledge receipt of your letter of December 14, 1937, relative to the application of Dr. R. E. Selders for certain hospital privileges in this institution. Dr. Selders' application was referred by me to the Executive Committee of the Medical Council. I shall be glad to inform you of the action taken by this Committee when it finally disposes of Dr. Selders' application.

Very sincerely yours, Lewis H. Taylor, M. D., President."

Gov. Ex. 356 is a letter from Dr. Taylor, President of Sibley, to Mr. Penniman, dated January 20, 1938:

"MY DEAR MR. PENNIMAN:

I am enclosing herewith a carbon copy of a letter to Dr. Raymond E. Selders which is self-explanatory.

In writing to Dr. Selders, I told him that I was forwarding you this copy.

With kind personal regards, I am

Very sincerely yours, Lewis H. Taylor, M. D., President."

The following is the enclosure:

"My dear Dr. Selders:

Your application for Medical, Minor and Major Surgical, Normal and Abnormal Obstetrical, Minor and Major Gynecological privileges in Sibley Hospital has been considered by the Executive Committee of this Hospital.

Guided by your questionnaire, I wrote to physicians to whom you referred for expressions as to your qualifications for the privileges requested by you. These physicians were:

Dr. C. J. Byrne, Worcester City Hospital, Worcester, Massachusetts.

Dr. Walter E. Lee, Graduate School of Medicine, University of Pennsylvania, Philadelphia, Penn.

Dr. C. L. Brown, Temple University, Philadelphia, Penn.

Dr. John T. Moore, St. Joseph's Infirmary, Houston, Texas.

No response has been received from any of these gentlemen. The Committee feels that sufficient data has not been submitted by you whereby they could come to a proper conclusion in the matter and have been compelled to decline your request.

In the future, should you care to offer supplementary data bearing on your qualifications, the Committee would be happy to reconsider your application.

I am taking the liberty of sending a carbon copy of this letter to Mr. Penniman, who forwarded your application to me.

Very sincerely yours, Lewis H. Taylor, M. D., President."

Gov. Ex. 357 is a letter from Dr. Taylor, President of Sibley Hospital, to Mr. Penniman, dated November 17, 1937. Gov. Ex. 358 is a letter from Mr. Penniman to Dr. Taylor, President of Sibley Hospital, dated November 18, 1937. These documents were not read to the jury.

Gov. Ex. 408 is a letter from Mr. Kirkpatrick to Dr. Taylor, President of Sibley Hospital, dated February 2, 1938:

"My dear Dr. Taylor:

Please refer to your letter of December 18, 1937, addressed to Mr. William F. Penniman, relative to an application of Dr. Raymond E. Selders, a member of the staff

of Group Health Association, Inc., to be accorded privileges of the courtesy staff of Sibley Memorial Hospital.

Inasmuch as this matter is one of much importance to us, we will very much appreciate having word from you as to what action the Executive Committee of the Medical Council has taken.

Very sincerely yours, W. C. Kirkpatrick, President."

Gov. Ex. 409 is a letter from Dr. Taylor to Mr. Kirkpatrick dated February 3, 1938:

"My dear Mr. Kirkpatrick:

I wish to acknowledge your letter of February 2, 1938 relative to the application of Dr. Raymond E. Selders, a member of your staff, for privileges in Sibley Memorial Hospital.

On January 20, 1938, I wrote to Dr. Selders explaining that the Executive Committee of the Medical Council of Sibley Memorial Hospital had considered his application for privileges and had been unable to grant them for the reason that he had not submitted sufficient data for the Committee to arrive at a conclusion. In this letter, I called Dr. Selders' attention to the fact that none of the four physicians to whom he had referred as to his qualifications and to whom I wrote, had answered my letter. Also, that if in the future he wished to submit supplementary data that the Committee would reconsider his case. A carbon of this letter was sent to your predecessor, President William F. Penniman. Since the above date, Dr. Selders has evidently communicated with his references for I have received letters from three of them. In a telephone conversation with Dr. Selders yesterday, I informed him of this fact and told him that I would submit these three letters to the Executive Committee at their next meeting, which would be in about two weeks.

Trusting the information contained above is that which you desire, I am

Very sincerely yours, Lewis H. Taylor, M. D., President."

Gov. Ex. 410 is a letter from Mr. Kirkpatrick to Dr. Taylor, President of Sibley Hospital, dated February 8, 1938:

"My dear Dr. Taylor:

Thank you very much for your letter of February 3, 1938, relative to the application of Dr. Raymond E. Selders for privileges in Sibley Memorial Hospital.

As I now understand the situation you have in your possession sufficient information with respect to Dr. Selders' qualifications to present his application to your Executive Committee at their next meeting which I understand will be held in about two weeks. I shall appreciate it very much if you will advise me what action your Executive Committee takes in the matter.

Very sincerely yours, W. C. Kirkpatrick, President."

Gov. Ex. 412 is a letter from Dr. Taylor to Dr. Selders dated February 24, 1938:

"My dear Dr. Selders:

Your application for Medical, Major and Minor Surgical, and Major Gynecological privileges in Sibley Memorial Hospital were, at your request, again submitted to the Executive Committee of the Medical Council of Sibley Memorial Hospital for reconsideration of their action in refusing the same.

I regret to inform you that the Committee did not reverse its action and your request has been refused.

Very sincerely yours, Lewis H. Taylor, M. D., President, Sibley Memorial Hospital."

Gov. Ex. 413 is a letter from Mr. Kirkpatrick to Mr. Paul B. Cromelin, President of Board of Trustees, Sibley Hospital, dated July 28, 1938:

"My dear Mr. Cromelin:

In view of Justice Bailey's decision yesterday establishing the legality of Group Health Association, Inc., it is respectfully requested that Dr. Raymond E. Selders, a member of our staff, be admitted to the courtesy staff of Sibley Memorial Hospital, and that he may attend members of this Association admitted as patients there.

We shall appreciate the courtesy of an early reply.

Very truly yours, W. C. Kirkpatrick, President."

Gov. Ex. 414 is a reply from M. G. Davis, Secretary of Mr. Cromelin, to Group Health Association, dated July 28, 1938:

"DEAR SIRS:

This will acknowledge receipt of your letter dated July 28, 1938, addressed to Mr. Paul B. Cromelin, President, Board of Trustees, Sibley Memorial Hospital, this city.

I beg to advise you that Mr. Cromelin is at present out of the city and will not return until about August 11th or 12th, at which time your letter will be called to his attention.

Very truly yours, M. G. Davis, Sec'y."

Gov. Ex. 415 is a letter from Mr. Kirkpatrick to Mr. Cromelin dated September 16, 1938:

"DEAR MR. CROMELIN:

On July 28, 1938, your Secretary advised this Association, in response to the writer's letter to you dated that day, that you would return to the city on or about August 11th or 12th and that my letter would be brought to your attention at that time.

I shall appreciate it very much if I may have a reply to my letter.

Very truly yours, W. C. Kirkpatrick, President."

Gov. Ex. 416 is a letter from Mr. Cromelin to Mr. Kirkpatrick dated September 23, 1938:

"DEAR SIR:

I beg to acknowledge the receipt of your letter addressed to me as President of the Board of Trustees of Sibley Memorial Hospital at 1140 North Capitol Street, this city. This letter has been forwarded to me at the address at which I have my regular office.

Dr. Lewis Taylor, the President of the Hospital, is in immediate charge of all matters affecting its maintenance and operation, as distinguished from the work of its Board of Trustees of which I am Chairman. I am sorry to have to advise that Dr. Taylor is ill at the present time.

If and when Dr. Selders is, by action of the Board of Trustees, admitted as a member of the courtesy staff of Sibley Memorial Hospital, he will be promptly notified to this effect.

Yours very truly, Paul B. Cromelin."

I did not receive any further communication from Sibley Hospital, Dr. Taylor or Mr. Cromelin. Dr. Selders was never admitted to the courtesy staff of Sibley Hospital.

Gov. Ex. 431 is a copy of a letter which I wrote. Gov. Ex. 432 is a copy of a letter which I wrote. Gov. Ex. 433 is a copy of a letter which I received. Gov. Ex. 434 is a copy of a letter which I wrote. Gov. Ex. 435 is a letter which I received. Gov. Ex. 436 is a letter which I received. Gov. Ex. 437 is a copy of a letter which I wrote. Gov. Ex. 438 is a letter which I received.

Gov. Ex. 431-438, inclusive, were offered in evidence. Defendants objected on the round of incompetency, irrelevancy, immateriality, no conspiracy had been proven, and hearsay. Objections overruled and exception noted.

Gov. Ex. 431-438, inclusive, were admitted in evidence.

The following exhibits were read to the jury.

Gov. Ex. 431 is a letter from Mr. Kirkpatrick to Dr. Eisenman, Secretary to the Board of Garfield Hospital, dated February 2, 1938:

"My dear Dr. Eisenman:

Pursuant to our telephone conversation of last evening, I enclose herewith a copy of a letter which I have written today to Mr. Clarence A. Aspinwall, President of Garfield Memorial Hospital.

Very sincerely yours, W. C. Kirkpatrick, President."

Gov. Ex. 432 is a letter from Mr. Kirkpatrick to Dr. Aspinwall dated February 2, 1938:

"Dear Mr. Aspinwall:

Under date of January 25, 1938, Dr. Francis J. Eisenman, Secretary to your Board of Trustees, notified Dr. Raymond E. Selders, a surgeon on the staff of Group Health Association, Inc., that your Board had withdrawn Dr. Selders' temporary privileges as a member of the courtesy staff of Garfield Memorial Hospital, effective as of January 25, 1938. Dr. Selders has referred Dr. Eisenman's letter to the writer. In Dr. Eisenman's letter it was stated that the privileges had been withdrawn until such time as the legality of Group Health Association, Inc., had been decided.

We feel there may have arisen some misunderstanding concerning the question of legality of our operation and in order that the question may be discussed and a clear understanding had by both parties, it is respectfully requested

that representatives of Group Health Association, Inc., be accorded the privilege of appearing before your Board of Trustees for the purpose of discussing the situation with them.

We shall be pleased to be present at any time or place most convenient to your Board. Inasmuch as this question is one of great importance to us and we believe to your Board, may we ask that arrangements for our appearance before your Board be made as soon as may be possible.

Very sincerely yours, W. C. Kirkpatrick, President."

Gov. Ex. 433 is a letter from Mr. Aspinwall, President of Garfield Hospital, to Mr. Kirkpatrick, dated February 3, 1938:

"DEAR MR. KIRKPATRICK:

I have your letter of February 2d. It will be a long time before our Board meets. If you want to drop in at my office, 1140 15th Street, and discuss the matter I shall be glad to talk to you.

Yours very truly, (Signed) C. A. Aspinwall, President."

I followed the suggestion of Mr. Aspinwall and visited him at his office shortly after I received his letter. Present at this meeting were Mr. Ormand E. Loomis, a trustee of Group Health, Mr. Louis Reed of the Social Security Board and Mr. Aspinwall.

The following exhibits were read to the jury:

Gov. Ex. 434 is a letter from Mr. Kirkpatrick to Mr. Aspinwall dated July 28, 1938:

"MY DEAR MR. ASPINWALL:

In view of Justice Bailey's decision yesterday establishing the legality of Group Health Association, Inc., it is respectfully requested that Dr. Raymond E. Selders, a member of our staff, be admitted to the courtesy staff of Garfield Memorial Hospital, and that he may attend members of this Association admitted as patients there.

We shall appreciate the courtesy of an early reply.

Very truly yours, W. C. Kirkpatrick, President."

Gov. Ex. 435 is a letter from Dr. Eisenman to Mr. Kirkpatrick dated July 29, 1938:

"DEAR SIR:

Acknowledge receipt of your letter of July 28, 1938, addressed to Mr. Clarence A. Aspinwall, President, Board of Trustees, of Garfield Memorial Hospital.

Advise that your communication has been forwarded to Mr. Aspinwall today.

Yours very truly, Francis J. Eisenman, M.D., Secretary, Board of Directors."

Gov. Ex. 436 is a letter from Mr. Aspinwall to Mr. Kirkpatrick dated July 30, 1938:

"DEAR MR. KIRKPATRICK:

I write to acknowledge receipt of your letter of the 28th.

As you know, all applications for courtesy staff privileges are referred to the Staff, and the recommendations of the staff are presented to the Board for final action. Dr. Selders' application will take the usual course.

Yours very truly, C. A. Aspinwall, President."

Gov. Ex. 437 is a letter from Mr. Kirkpatrick to Mr. Aspinwall dated September 16, 1938:

"DEAR MR. ASPINWALL:

Referring to your letter of July 30, 1938, I would appreciate very much having some advice from you as to the action taken by your Board with respect to the application of Dr. Raymond E. Selders for admission to the Courtesy Staff of Garfield Memorial Hospital.

Very truly yours, W. C. Kirkpatrick, President."

Gov. Ex. 438 is a letter from Mr. Aspinwall to Mr. Kirkpatrick dated September 20, 1938:

"DEAR MR. KIRKPATRICK:

In response to your letter of the 16th, only received this morning, up to the time I left for my holiday a month ago, the Staff had made no recommendation regarding the application of Dr. Selders' for admission to the Courtesy Staff of Garfield Hospital.

I shall be going to the Hospital in a day or two, and shall then find out if the Staff has made any recommendation to the Board in regard to this matter.

Yours very truly, C. A. Aspinwall, President."

I did not receive any further communication either from Mr. Aspinwall, Dr. Eisenman or Garfield Hospital relative to this matter. No doctor connected with Group Health was ever admitted to the courtesy staff of Garfield Hospital after January 25, 1938, except for Dr. Selders' temporary admission in the early part of that year. This was revoked on January 25, 1938.

Gov. Ex. 439 is a letter which I wrote. Gov. Ex. 440 is a letter which I received in reply. Gov. Ex. 441 is a letter which I wrote. Gov. Ex. 442 is a letter which I received in reply.

Gov. Exs. 439-442, inclusive, were offered in evidence. Defendants objected upon the grounds that they were immaterial, irrelevant, incompetent, no conspiracy had been proven, and hearsay. Objection overruled and exception noted.

Gov. Exs. 439-442, inclusive, received in evidence.

Gov. Ex. 439 is a letter from Mr. Kirkpatrick to Father O'Leary, President of Georgetown University, dated July 28, 1938. This letter is similar to other letters referring to Judge Bailey's decision as to the legality of Group Health and renewing the application for admission to courtesy privileges. For this reason the letter was not read to the jury.

The following exhibits were read to the jury.

Gov. Ex. 440 is a letter from Father O'Leary to Mr. Kirkpatrick dated July 30, 1938:

"DEAR MR. KIRKPATRICK:

Your letter of July 28, requesting that Dr. Raymond E. Selders, a member of your staff, be admitted to the courtesy staff of Georgetown University Hospital has been received.

I shall be glad to refer the matter to the executive committee of the Hospital staff at its next regular meeting.

Very truly yours, Arthur A. O'Leary, S.J., President."

Gov. Ex. 441 is a letter from Mr. Kirkpatrick to Father O'Leary dated September 16, 1938:

"DEAR FATHER O'LEARY:

On July 30, 1938, you advised the writer that the matter of admission of Dr. Raymond E. Selders to the Courtesy

Staff of Georgetown University Hospital would be referred to the executive committee of the staff at its next regular meeting.

I shall appreciate very much being advised by you as to what action that may have been taken in the meantime.

Very truly yours, W. C. Kirkpatrick, President."

Gov. Ex. 442 is a letter from Father O'Leary to Mr. Kirkpatrick dated October 11, 1938:

"DEAR MR. KIRKPATRICK:

In reply to your letter of September sixteenth, 1938, I wish to state that at the meeting of the Executive Staff of Georgetown University Hospital, held yesterday, it was the decision of the Staff that no change should be made in the case of the refusal to admit Dr. Raymond E. Selders to the Courtesy Staff of Georgetown University Hospital.

Dr. Selders was informed on March 4, 1938, by Dr. Fred O. Coe, Secretary of the Executive Staff, that his application to treat minor surgical, major surgical and gynecological cases at the hospital had been rejected.

Very truly yours, Arthur A. O'Leary, S.J., President."

I did not receive any further communication from Georgetown University Hospital or any authorities of that hospital.

Gov. Ex. 443 is a copy of my letter to Dr. J. B. Gregg Custis, Executive Officer, Board of Trustees, National Homeopathic Hospital. Gov. Ex. 444 is a copy of a letter which I wrote to Mr. Fred McKee, President, Board of Trustees of National Homeopathic Hospital. Gov. Ex. 445 is a letter which I received in reply to Gov. Ex. 444. Gov. Ex. 446 is a letter which I wrote to Mr. McKee. Gov. Ex. 447 is a copy of a letter which I wrote to Mr. McKee.

Gov. Ex. 443-447, inclusive, were offered in evidence. Defendants objected on the grounds that they were incompetent, immaterial, irrelevant, no conspiracy had been proven, and hearsay. Objection overruled and exception noted.

Gov. Ex. 443-447, inclusive, were received in evidence.

The following exhibits were read to the jury.

Gov. Ex. 443 is a letter from Mr. Kirkpatrick to Dr. J. B. Gregg Custis, Executive Officer of the Board of Trus-

tees of National Homeopathic Hospital dated February 2, 1938:

"DEAR DR. CUSTIS:

This will refer to your letter of November 9, 1937, addressed to Mr. William F. Penniman.

The Board of Trustees of this Association are anxious to discuss with the Board of Trustees of National Homeopathic Hospital the subject matter of your letter. We believe that such a discussion will be helpful to both parties and it is respectfully requested that representatives of Group Health Association, Inc., be accorded the privilege of appearing before your Board at a time and place most convenient to it. If you will be good enough to advise the writer we shall be pleased to make arrangements accordingly.

We will very much appreciate receiving a prompt reply to this letter.

Very sincerely yours, W. C. Kirkpatrick, President."

I did not receive any reply to that letter nor was I ever accorded the privilege of this discussion which I asked for. After this time I never had a discussion with the authorities of National Homeopathic Hospital.

Gov. Ex. 444 is a letter from Mr. Kirkpatrick to the president of National Homeopathic Hospital calling attention to Justice Bailey's decision holding the legality of Group Health and renewing the application. For this reason the letter was not read in evidence.

The following exhibits were read to the jury:

Gov. Ex. 445 is a letter from Mr. McKee to Kirkpatrick dated August 1, 1938:

"DEAR MR. KIRKPATRICK:

Receipt is acknowledged of your favor of the 28th requesting that Dr. Raymond E. Selders be admitted to the courtesy staff of National Homeopathic Hospital.

If you will have Dr. Selders fill in the enclosed application for membership to the courtesy staff and return to me I will see that it is promptly referred to the proper Committee.

Very truly yours, Fred McKee, President, Board of Trustees."

Gov. Ex. 446 is a letter from Mr. Kirkpatrick to Mr. McKee, dated August 4, 1938:

"DEAR MR. MCKEE:

Thank you for your letter of August 1, 1938, with which you enclose a blank form of application for our Surgeon, Dr. Raymond E. Selders, to execute. The form so executed is returned herewith. It will be appreciated if you will advise the writer as to the action of the Committee in the matter of Dr. Selder's application.

Very truly yours, W. C. Kirkpatrick, President."

I did not receive any response to this letter.

Gov. Ex. 447, a letter from Mr. Kirkpatrick to Mr. McKee dated September 16, 1938, was read to the jury as follows:

"DEAR MR. MCKEE:

On August 4, 1938, the writer sent you an application blank executed by Dr. Raymond E. Selders for admission to the Courtesy Staff of National Homeopathic Hospital. In your letter of August 1, 1938, you advised me that the application would be referred to the proper committee promptly.

I shall appreciate it very much if I may have advice from you as to what action may have been taken with respect to the matter.

Very truly yours, W. C. Kirkpatrick, President."

I did not receive any response to Gov. Ex. 447. I did not receive any further word from the authorities of National Homeopathic Hospital with regard to this matter. No doctors connected with Group Health were ever admitted during 1938 to the courtesy staff of National Homeopathic Hospital.

Gov. Ex. 448 is a letter which I wrote to Dr. Caylor, Secretary of Providence Hospital. Gov. Ex. 449 is a letter which I wrote to Sister Rosa, Acting President of the Board of Trustees of Providence Hospital. Gov. Ex. 450 is a copy of a letter which I wrote to Sister Rosa, dated September 16, 1938.

Gov. Exs. 448, 449 and 450 were offered in evidence. Defendants objected on the ground that they were incompetent,

irrelevant, immaterial, no conspiracy had been proven, and hearsay. Objections overruled and exception noted.

Gov. Exs. 448; 449 and 450 were received in evidence.

Gov. Ex. 448 is a letter from Mr. Kirkpatrick to Dr. Caylor, Secretary of Providence Hospital, dated February 2, 1938. This is the usual letter written by Mr. Kirkpatrick and for that reason was not read to the jury. Gov. Ex. 449 is a letter from Mr. Kirkpatrick to Sister Rosa, Acting President of the Board of Trustees of Providence Hospital dated July 28, 1938. This is the usual letter written by Mr. Kirkpatrick and refers to the favorable decision of Mr. Justice Bailey and for this reason was not read to the jury.

Gov. Ex. 450, a letter from Mr. Kirkpatrick to Sister Rosa, dated September 16, 1938, was read to the jury as follows:

"My dear Sister Rosa:

On July 28, 1938, the writer addressed a letter to you requesting permission for Dr. Raymond E. Selders to be admitted to the Courtesy Staff of Providence Hospital.

It will be very much appreciated if I may have some advice from you as to what action that may have been taken in the matter.

Very truly yours, W. C. Kirkpatrick, President."

I did not receive any reply to my letters of July 28, 1938, and September 16, 1938. I did not receive any further communication from the authorities of Providence Hospital. No doctor connected with Group Health was admitted to the courtesy staff of Providence Hospital during 1938.

Gov. Ex. 451 is a copy of a letter which I wrote to Mr. Rice, Credit Manager of the Washington Sanitarium. Gov. Ex. 452 is the reply which I received from Dr. Robert A. Hare on behalf of the Washington Sanitarium. Gov. Ex. 453 is a letter which I received from Dr. Hare. Gov. Ex. 455 is a copy of a letter which I wrote to Dr. Hare. Gov. Ex. 456 is a letter which I received from Dr. Hare. Gov. Ex. 457 is a copy of a letter which I wrote Dr. Hare.

Gov. Exs. 451, 452, 453, 455, 456 and 457 were offered in evidence. Defendants objected on the grounds that they were incompetent, immaterial, irrelevant, no conspiracy had been proven, and hearsay. Ruling reserved.

Early in 1938 I approached the Washington Sanitarium to see if I could have Group Health doctors and the patients admitted there. I called on Mr. Rice, the Credit Manager for the hospital, at Tacoma Park. I was accompanied by Mr. Carson, a trustee of Group Health.

On December 20, 1938, about 45 members of Group Health were awaiting hospitalization and elective surgical operations. The reason there is a difference between the number then waiting and the number at the time when I assumed office at the beginning of 1938 was that the operations were postponed and in other cases they resorted to outside physicians to have the operations performed and other members resigned from the Association. By outside physicians I mean doctors in private practice who were not members of the staff of Group Health.

Q. And how were those doctors compensated; do you know?

A. Our doctors?

Mr. Leahy: I object to pure hearsay.

Mr. Lewin: No; I think it is not hearsay.

By Mr. Lewin:

Q. Did you compensate those doctors for this work?

A. I approved their compensation.

Q. And who compensated them?

A. Yes, sir; I signed the checks.

Q. All right. Now, who compensated those outside doctors who were not on the staff of Group Health Association, who performed these operations on Group Health members during '38?

A. Group Health Association compensated them.

Q. So that was an additional expense for medical service to the salaries that you paid your regular staff?

A. It was.

Q. And why was it necessary for them to seek these outside doctors?

Mr. Leahy: I object, if your Honor please.

The Witness: Because the hospitals would not admit our physicians.

Mr. Leahy: Wait just a minute.

The Court: I thought you said——

Mr. Leahy: I don't think it is competent, if your Honor please.

Mr. Burke: Argumentative. The question starts with "Why." It is an argumentative question.

Mr. Lewin: All questions starting with "why" are banned?

The Court: What was the question, Mr. Lewin?

Mr. Lewin: I want to know why it was necessary for these members of Group Health to seek these outside doctors.

Mr. Leahy: How would he know except from hearsay?

Mr. Lewin: Oh, mercy! Hearsay! You are overworking that.

Mr. Leahy: I don't think so, if your Honor please.

The Court: I think it is in the form of a conclusion, isn't it?

Mr. Lewin: He paid the bills for all those.

Mr. Leahy: It does not answer the question.

The Court: I am agreeing with you absolutely.

Mr. Lewin: You agree with me?

The Court: Except that I think he should state why he paid them, why it was necessary for him to employ them and pay them.

Mr. Lewin: That is what I wanted to know. According to Mr. Burke's idea any question beginning with "Why" is bad.

The Court: You sometimes misconstrue my remarks. I am with you.

Mr. Lewin: I am so pleasantly surprised, your Honor.

By Mr. Lewin:

Q. Now, Mr. Kirkpatrick, tell us——

The Witness: May I have the question repeated, please?

Mr. Lewin: Gracious, I am afraid to do it.

Mr. Leahy: Go ahead; ask it again.

The Court: Let me put the question; then there will be no objection to it.

Mr. Richardson: I am not so sure about that.

By the Court:

Q. What was your reason for compensating these doctors?

A. Well, primarily because they presented us a bill for their services.

Q. Well, what was your current obligation?

A. Well, these members of Group Health Association were entitled to receive this service, and if we couldn't supply it with our own staff we felt obligated to supply it elsewhere.

The Court: I think that covers it.

By Mr. Lewin:

Q. Why couldn't you supply it with your own staff?

A. For the reason that our own staff was not admitted to the hospitals to perform the operations that were needed.

Gov. Ex. 458 is a letter which I wrote to Dr. Thomas E. Neill, President of the Medical Society of the District of Columbia, dated March 21, 1938. Gov. Ex. 459 is a letter which I received from Dr. Neill in reply and it is dated Mar. 22, 1938. Gov. Ex. 460 is a letter which I received from Dr. Neill dated April 11, 1938. Gov. Ex. 461 is a copy of my reply to Dr. Neill dated April 19, 1938. Gov. Ex. 458-461, inclusive, were offered in evidence.

In August of 1938 Dr. Halstead applied to a number of Washington hospitals for privileges.

R. T. Berry was Secretary of Group Health during this period. I know his signature. Gov. Ex. 462 bears Mr. Berry's signature.

Gov. Ex. 462 was offered in evidence. Defendants objected on the grounds of incompetency, immateriality, irrelevancy, no conspiracy had been proven, and hearsay, and that the letter contained opinions of the writer. Ruling reserved.

The Court thereupon considered Gov. Exs. 458, 459, 460 and 461. Defendants objected on the grounds that they were incompetent, immaterial, irrelevant, no conspiracy had been proven, and hearsay, and that Gov. Exs. 459 and 462 were self-serving, prejudicial statements of Group Health. Objections overruled and exception allowed, except that ruling upon Gov. Exs. 460, 461 and 462 were reserved.

Gov. Exs. 458 and 459 were received in evidence.

After several conferences, with counsel, concerning the question of whether prima facie the Washington Hospitals participated in the conspiracy, the Court ruled as follows:

The Court: As to this line of testimony offered by the Government which we have discussed, I have reached the

conclusion it should be received. We will go ahead with it.

Mr. Leahy: That will go in under our objection and exception?

The Court: That will go along under the general understanding as to your objection and exception, unless as to some particular item; except as to that, the whole line of testimony will be understood to be under your objection and exception.

The following exhibits heretofore received in evidence, were read to the jury as follows:

Gov. Ex. 458 is a letter from Mr. Kirkpatrick, President of Group Health, to the defendant, Thomas E. Neill, President of the District Medical Society, dated March 21, 1938:

"Dear Dr. Neill:

A situation arose yesterday, March 20, in regard to a member of Group Health Association who is seriously ill with coronary thrombosis, which gives us the gravest concern for the welfare of 2500 members of our Association and their 3500 dependents. If the instructions you have reported to have issued to a distinguished physician in good standing with the Medical Society of the District of Columbia are correctly reported to us, your action not only discredits the medical profession as a whole but would violate every humane precept that has been the cornerstone of the practice of medicine since the time of Hippocrates.

The facts as reported to me in my official capacity as President of Group Health Association are these:

Dr. Richard H. Price, a member of the Group Health medical staff, has been attending a patient, a member of Group Health Association who has been suffering from a serious heart affliction known as coronary thrombosis. His condition reached such a serious stage yesterday that Dr. Price wished to call into consultation on the case a heart specialist of repute, who is a member of your Society. Dr. Price reports he was informed by this physician that he had been advised by you that he would not be permitted to enter into such a consultation. Dr. Price reports him as saying in effect that you had ruled no member of the Medical Society of the District of Columbia could consult with a physician on the staff of GHA; that he could not visit a member of ours or render any service in the presence

of a Group Health physician, regardless of the critical nature of the case; that any contact or 'consultation' between this physician and a staff physician of Group Health would have to be confined to formal notes or conversation on the telephone.

Dr. Price concurred with me that every concession should be made in order to obtain the services of this heart specialist for this patient and such arrangements were immediately concluded. Dr. Price informs me that the physician was both sympathetic and willing to give his services in any form consistent with the rules of the Medical Society of the District of Columbia. We appreciate his attitude and are happy to have obtained his services in view of the critical nature of the patient's illness.

I feel sure that a gross misunderstanding has taken place as it is inconceivable that you, as President of the District Society, would take such an autocratic stand in committing the medical profession to an inhumane policy. If true, your leadership of the Medical Society has not only barred GHA physicians from their right to administer to human needs in the hospitals of Washington but from their right and their duty to avail themselves of the benefits of consultation with other leaders of the Medical profession in administering to their patients.

It is vitally important that we have a clear understanding of your position in the matter immediately. I, therefore, await word from you.

Yours very truly, W. C. Kirkpatrick, President."

Gov. Ex. 459 is Dr. Neill's response to Mr. Kirkpatrick's letter, dated March 22, 1938, on the letterhead of The District Medical Society:

"My dear Mr. Kirkpatrick:

I acknowledge your letter of March 21st in which you refer to the occasion when Dr. Richard H. Price, a member of the medical staff of the Group Health Association is said to have endeavored to enlist the services of a member of the Medical Society of the District of Columbia as a consultant in connection with the treatment of a member of your Association.

In view of the statements contained in your letter, and the wide publicity given to it in the public press, it is obvious that the primary purpose of your communication

is to create in the public mind an erroneous impression as to the attitude of the Medical Society of the District of Columbia and the members thereof in rendering medical aid to the community in general.

In order to have a proper appreciation of the questions involved it is first necessary to have a correct understanding of the facts. In the case referred to by you, it is my understanding that the services of the consultant in question were solicited by a member of the family of the patient because of the fact that on a prior occasion he had treated a member of the family of the patient for a like ailment. When it developed that the patient was being treated by Dr. Richard H. Price, a member of the staff of the Group Health Association, the consultant sought my advice as to whether it was permissible under the Constitution of the Society for him to enter into consultation with a member of your medical staff. Having in mind the Constitution of the Medical Society, which provides that:

'No member of the Society shall engage in any professional capacity whatsoever with any organization, group or individual, by whatever name called or however organized, engaged in the practice of medicine within the District of Columbia or within ten miles thereof, which has not been approved by the Society.'

and considering the fact that the Group Health Association has not been approved by the Medical Society, I advised the consultant that under the provisions of the Constitution of the Society, he was not authorized to enter into consultation with Doctor Price.

I amadvised that the consultant informed Doctor Price that while he could not see the patient in consultation, nevertheless, he would gladly see the patient independently and render whatever medical service might be needed. Agreeable to the wishes of the patient, the consultant called upon him, made a diagnosis and gave advice as to treatment, all of which was communicated to Doctor Price.

A frank and fair disclosure of the facts clearly indicates that the best interests of the patient were in every respect safeguarded, and in no wise did he suffer any detriment.

The Group Health Association is engaged in the practice of medicine in the District of Columbia in violation of the provisions of the Act of Congress known as the "Healing

Arts Practice Act," in force in this District, which is a comprehensive act for the government, regulation and control of the practice of medicine. Because of the fact that the Group Health Association is illegally engaged in the practice of medicine, it has not, and cannot, be approved by the Medical Society as a proper organization to engage in the practice of medicine in this District.

Notwithstanding the fact that the United States District Attorney has ruled that the Group Health Association is engaged in the practice of medicine in violation of law, nevertheless, it has persisted in the continuance of this illegal practice. The Constitution of the Medical Society is binding upon its members, and as President of the Society, I am obligated, when called upon, to advise the members of the Society that the provisions of its Constitution are mandatory and must be adhered to.

I have no discretion to suspend the provisions of the Constitution of the Society, and so long as the Group Health Association persists in the practice of medicine in violation of law, it is my bounden duty to advise the members of the Society that under its Constitution they are not authorized to enter into consultation with the hired agents of the Group Health Association.

In conclusion, I desire to emphasize that this does not mean that the members of the Group Health Association, or any other members of the community, will be deprived of proper medical attention. On the contrary, the members of the Medical Society stand ready at all times to render necessary and proper medical attention to all persons in the community, including the members of the Group Health Association.

Very truly yours, (Signed) Thos. E. Neill, M. D., President, The Medical Society of the District of Columbia."

Gov. Ex. 322 is the Report of the Hospital Committee submitted November 11, 1937:

"In view of the resolution adopted by The Medical Society of the District of Columbia on the evening of November 3, 1937, The Hospital Committee held a meeting, at my office, on the evening of November 9, 1937, and recommends that The Medical Society of The District of Columbia send the following resolution to the Medical Boards

of the various, local hospitals for interpretation to the Boards of Directors of those hospitals:

'That the hospitals accept patients from Group Health Association, Inc., provided that Group Health Association, Inc., is responsible for their financial obligations; that these patients only be treated by the attending, associate, assistant and courtesy staff physicians of the respective local hospitals.'

J. Ogle Warfield, Jr., Chairman, Hospital Committee."

At the bottom of Gov. Ex. 322, is a handwritten note as follows:

"The Med. Soc. of D. C. voted on November 11, 1937, to re-commit their report to the Hospital Committee for further consideration."

Gov. Ex. 323 is written on the letterhead of Dr. J. Ogle Warfield, Jr., and is headed "Report of the Hospital Committee, December 1, 1937":

"The Hospital Committee submits the following resolution:

Resolved that: As a matter of educational policy The Medical Society of D. C. strongly recommends that all hospitals engaged in the teaching and training of residents, interns, and nurses, where possible, follow the recommendation of The American Medical Association regarding the constitution of their entire Medical Staffs, namely, that each appointee be a member of The Medical Society of D. C. or a local Medical Society in this immediate neighborhood and a member of the American Medical Association.

Mr. President, I move that this resolution be adopted and a copy of it be sent to each of the local hospitals.

J. Ogle Warfield, Jr., Chairman, Hospital Committee."

Gov. Ex. 83 is a letter from the defendant, C. B. Conklin, Secretary, District Medical Society, to Dr. J. Ogle Warfield, Jr., Chairman, Committee on Hospitals, The Medical Society of the District of Columbia, Washington, D. C., dated February 25, 1938:

"DEAR DOCTOR WARFIELD:

Pursuant to action of the Executive Committee, in session on the evening of February 21, 1938, the enclosed resolution, which was presented to the Society at the Business Meeting in February, was ordered referred to the Hospital Committee for consideration and report.

Very truly yours, C. B. Conklin, M. D., Secretary."

The Resolution enclosed in Gov. Ex. 83 is as follows:

"Resolution presented at the Business Meeting of the Medical Society of the District of Columbia, in session on February 2, 1938, by Dr. Thomas E. Mattingly; ordered referred to the Executive Committee for consideration and report.

That the proper agency of the Medical Society be instructed to present at our next stated meeting the facts relating to the present status of Group Health physicians at the various Washington hospitals preliminary to appropriate disciplinary action, in event any hospital has ignored the Medical Society's wishes in the premises."

Gov. Ex. 313 is a letter from the defendant, Dr. Warfield:

February 3, 1938.

"Dr. W. Warren Sager, 1835 Eye Street, N. W. Washington, D. C.

DEAR DR. SAGER:

I would appreciate your inquiring of your hospital which you represent on the Hospital Committee whether any action has been taken on the names or applications of physicians or surgeons connected with Group Health Association, Inc., also has your hospital recently revised its lists of courtesy and staff physicians and surgeons?

Sincerely, J. Ogle Warfield, Jr., Chairman—Hospital Committee."

Gov. Ex. 312 is headed "Committee on Hospitals" as follows:

"Committee on Hospitals
1937-38
(Garfield) CHAIRMAN: J. Ogle Warfield, Jr.
(Childrens) 1726 Eye Street, N. W.
Washington, D. C.

Georgetown—Leon A. Martel, 1801 Eye Street, N. W. Na. 7200

Episcopal—Wm. H. Jenkins, The Connecticut Apts: Di. 3200.

Homeopathic—Gregg C. Birdsall, 1832 Kalorama Rd., N. W. Co. 3350.

Casualty—J. Rogers Young, 1400 M Street, N. W. Met. 2419.

Emergency—Wm. B. Marbury, 2238 Q Street, N. W. No. 8600.

Columbia—Jerome F. Crowley, The Connecticut Apts. Di. 3200.

Providence—J. P. Shearer, Farragut Medical Bldg. Di. 5870.

G. Washington—W. Warren Sager, 1835 Eye Street, N. W., Na. 7200.

John H. Trinder, 1746 K Street, N. W. Di. 4620.

Sibley—Jessie T. Mann, 1024 Mass. Ave., N. E. Li. 6440.

Counsel for Medical Society of D. C.—

Frederick A. Fenning, 940 Shoreham Building, Washington, D. C. Phone—National 1194

President of Medical Society of D. C.—

Dr. Thomas E. Neill, 1824 Mass. Ave., N. W. Phone—Decatur 1707 or

2810 35th Street, N. W.—Phone—Cleveland 0026."

(Mr. Kelleher: Gov. Exs. 314-321 are replies which Dr. Warfield received in response to letters sent to members of the Hospital Committee.)

Gov. Ex. 324, written on the letterhead of Earle G. Breeding, dated February 8, 1938, and addressed to Dr. John H. Trinder, The Parkwood, 1746 K Street, N. W., Washington, D. C.:

"Dear Doctor:

Referring to the enclosed inquiry of Dr. Warfield, I wish to advise there have been no applications of physicians or surgeons connected with the Group Health Association, Inc., for the courtesy of the Episcopal Hospital to date.

The Hospital has recently revised its courtesy list and this list may be obtained by applying to the Superintendent of the Hospital if your committee requests it.

If any further information is required, I will be glad to give it to you or you may obtain same from the acting Superintendent.

Very sincerely, Earle G. Breeding, M. D."

Gov. Ex. 320 is a letter dated February 4, 1938 on the letterhead of Columbia Hospital for Women to Dr. J. Ogle Warfield, Jr., 1726 Eye Street, N. W., Washington, D. C.:

"My dear Doctor Warfield:

Dr. Jerome F. Crowley has asked me if I would give you the information which you request in your letter to him dated February 3, and I take pleasure in doing so.

This hospital has not as yet taken any action on the application of any physician or surgeon connected with the Group Health Association.

This hospital has not recently revised its list of courtesy and staff physicians and surgeons.

Very truly yours, P. M. Ashburn, Superintendent."

Gov. Ex. 319 is a letter on the letterhead of the National Homeopathic Hospital, Washington, D. C., to Dr. J. Ogle Warfield, Jr., Chairman, Hospital Committee, 1726 Eye Street, N. W., Washington, D. C.:

"My dear Dr. Warfield:

In compliance with your request to Dr. Birdsall, I am enclosing copies of the two letters, one of which is being sent to every member of our Courtesy Staff of 1937.

I am also enclosing copy of a letter sent to Mr. Penniman under date of November 9, 1937.

I believe the letters are self-explanatory in showing that the hospital has recently revised its list of courtesy and staff physicians and surgeons, excluding those who are not members of an organized Medical Society.

Sincerely, Frances Whitlock Hall, Superintendent."

Gov. Ex. 318 is one of the letters enclosed in Gov. Ex. 319, dated March 18, 1938, on the letterhead of the National Homeopathic Hospital, Washington, D. C.

"The Trustees of the National Homeopathic Hospital are revising the Courtesy Staff for 1938. We wish to add your name to the Staff but find that the Medical Society

of the District of Columbia does not list your name among its members.

The rules of the Hospital governing staff members requires membership in a local medical society of the District of Columbia, nearby Maryland, or Virginia.

Will you kindly advise me if you belong to any of the medical societies, at your earliest convenience.

Yours very truly,"

Mr. Leahy: To whom is that letter addressed?

Mr. Lewin: It is addressed to every member of the courtesy staff of Homeopathic; it is the communication referred to in the other exhibit.

Mr. Leahy: Is it addressed to anyone?

Mr. Kelleher: No, nothing on the top.

Mr. Lewin: It is enclosed in this letter which Mr. Kelleher just read.

Gov. E 317 is a letter dated March 18, 1938, on the letterhead of the National Homeopathic Hospital to the defendant, Dr. J. Ogle Warfield, Chairman of the American Medical Association Committee, 1726 Eye Street, N. W., Washington, D. C.

"Dear Dr. Warfield:

I am enclosing you herewith for your files, copy of letter written to each member of our Courtesy Staff, and also a copy of letter that has been written to those who we found were on the list, but were not members of any medical association.

Yours very truly, Fred McKee, President, Board of Trustees."

Gov. Ex. 316 is a handwritten letter from G. C. Birdsall, M. D., 1832 Kalorama Road, Washington, D. C., dated February 10, 1938:

"Dear Doctor:

The National Homeo. Hospital met all requirements when appointing staff and courtesy staff. I asked the superin-

tendent to mail you copies of the letters which were mailed out. All members were required to be affiliated with organized medical society either in the District or surrounding adjacent counties. A few of the younger men were given to May to affiliate themselves with their medical society before their applications could be accepted.

Very truly, G. C. Birdsall."

Gov. Ex. 315 is a letter from Dr. Marbury to the defendant, Dr. J. Ogle Warfield, Jr., 1726 Eye Street, N. W., Washington, D. C., dated February 9, 1938:

"DEAR DR. WARFIELD:

I have your letter of February 3rd. I have inquired at Emergency Hospital whether or not there has been any change in the situation in regard to the Group Health Association, and also whether there has been any revision of the courtesy list and staff appointments. Apparently the hospital has not taken any new action in regard to physicians of the Group Health Association, Inc. They cannot treat patients at Emergency Hospital because they do not belong to the D. C. Medical Society.

The notices in regard to the courtesy list and staff physicians goes out in April. There have been no recent changes in any of these appointments. I hope this gives you the information desired.

Very sincerely yours, Wm. B. Marbury."

Gov. Ex. 314 is a letter from the defendant, J. Rogers Young, to the defendant, J. Ogle Warfield, Jr., dated February 9, 1938:

"DEAR DR. WARFIELD:

In response to your inquiry of February 3, I wish to inform you that the Eastern Dispensary and Casualty Hospital is at this time revising its lists of courtesy and staff physicians and surgeons. To date we have had no application from any physician or surgeon connected with the Group Health Association.

If there is any further information I can give you regarding this matter, I shall be glad to cooperate with you in any way.

Very truly yours, J. Rogers Young."

Gov. Ex. 296 is a Questionnaire filled out and returned by the National Homeopathic Hospital:

"Questionnaire

1. What communication has your hospital had from Group Health Association, Inc.?

Answer (in pen handwriting). Received circular letter dated November 8th.

2. What reply has your hospital made to Group Health Association, Inc.?

No action would be taken until Group Health Assoc. was approved by D. C. Med. Soc.

3. Which, if any of the following Doctors are now members of your Medical Staff in any capacity or have privileges to practice in your hospital?

Dr. Henry Rolf Brown. No.
Dr. Allan E. Lee. Yes.
Dr. Mario Scandiffio. Yes.
Dr. R. Stephen Hulburt. No.
Dr. Raymond E. Selders. No.
Dr. Edmond B. Wells. No."

In handwriting is the following note:

"Courtesy staff: Lee, obstetrics; Scandiffio, pediatrics; both have had patients in hospital formerly. Further action regarding them awaits the action taken by D. C. Med. Society."

Next question:

4. Is your hospital in sympathy with the policies of The Medical Society of D. C.?

Yes—100%.

5. Is the entire Medical Staff of your hospital reappointed annually?

Yes.

6. Are appointments to the Medical Staff of your hospital approved by the Medical Staff?

Yes.

7. What governing body of your hospital finally makes appointments to the Medical Staff?

Board of Trustees.

8. Does your hospital require membership in the Medical Society of D. C. as a qualification for appointments to its Medical Staff?

Yes—Required since Jan. 1, 1937.

9. What percentage of the entire medical staff of your hospital are members of the Medical Society of D. C.?
100%—not all of courtesy staff.

10. Does your hospital require membership in the A.M.A. as a qualification for appointment to its Medical Staff?
Only through membership in D. C. Med. Soc.

11. What percentage of the entire Medical Staff of your hospital are members of the A.M.A.?
100%.

12. Is your hospital a beneficiary of Community Chest funds?
Yes.

13. Will you kindly make any other inquiry that you think might be pertinent at this time?
The Hospital wants to co-operate with D. C. Med. Soc.—Would like advice about course to pursue regarding applications from patients holding Group Health Assoc. Also regarding consultations in such cases.

Frances Whitlock Hall, Superinendent. G. C. Birdsall, For Hospital Committee."

Gov. Ex. 311 is a handwritten memorandum from the defendant, Dr. Warfield: At the top of one column is the word "Doctors"; at the top of the other is "Require membership in D. C. Medical Society", and listed on the left-hand column are the names of the Washington, D. C. hospitals:

"Georgetown—Doctor. None.
Require membership in D. C. Medical Society. Yes.

Episcopal—Doctor. None."
There is no answer to the question in the second column.

"Homeopathic." The name Scandiffio is stricken out and also the zero is stricken, in pen.
"Require membership in D. C. Medical Society. Yes."

The next is:

"Casualty—Doctor. None.
Require membership in D. C. Medical Society.
Qualified for membership in local Society.

Emergency—Doctor. None.
Require membership in D. C. Medical Society. Yes.

Columbia—Doctor. None.
Require membership in D. C. Medical Society. No.

Providence—Doctor. None.
Require membership in D. C. Medical Society. Yes.

George Washington—Doctor. None.
Require membership in D. C. Medical Society. No.

Sibley—Doctor. Scandiffio.
Require membership in D. C. Medical Society. No.

Garfield—Doctor. None.
Require membership in D. C. Medical Society. Yes.

Childrens—Doctor. None.
Require membership in D. C. Medical Society. Yes."

Gov. Ex. 324 was offered and read to the jury only against the defendant Warfield, as follows:

"Report of the Hospital Committee submitted to the Executive Committee of the Medical Society of the District of Columbia on March 28, 1938, and to Medical Society 4/6/38.

The Hospital Committee has purposely avoided the submission of a list of local hospitals for approval of the Medical Society. The eleven local hospitals therefore remain approved by the Medical Society as of November 4, 1936. To have attempted to re-approve these hospitals last fall or this winter would have detrimentally created conflicts between the Medical Society and some of the local hospitals because of attempted enforcement of the provisions of Chapter IX, Article IV, Section five of the Constitution of the Medical Society."

Mr. Kelleher: The first sentence of the second paragraph, or a portion thereof, is stricken, and inserted in handwriting of defendant Warfield are certain words. I will first read the sentence as it was originally and then the sentence as changed by Dr. Warfield.

"In an effort to hinder the operation of Group Health Association, Inc. in the local private hospitals, the Medical Society adopted a resolution on November 3, 1937."

The sentence as changed reads as follows:

"In an effort to maintain the high standards of practice in the local private hospitals, the Medical Society adopted a resolution on November 3, 1937 directing the Hospital Committee to recommend the best way of bringing the questions involved to the attention of the Medical boards and boards of directors of the various local hospitals to insure the maximum amount of accomplishment with the minimum amount of friction and conflict. On December 1, 1937 the Hospital Committee submitted a resolution, which was adopted, that the Medical Society recommend to the hospitals that they follow the recommendation of the American Medical Association, namely, that each hospital appointee be a member of his or her local medical society and a member of the American Medical Association.

On February 2, 1938 the Medical Society adopted a resolution requesting, at the next stated meeting, the facts relating to the present status of Group Health physicians at the various Washington hospitals."

And the rest of the sentence is stricken. It reads as follows:

"preliminary to appropriate disciplinary action in event any hospital had ignored the Medical Society's wishes in the premises."

Mr. Kelleher: The report then continues:

"This resolution was referred to the Executive Committee and in turn to the Hospital Committee.

The Hospital Committee reports that, at this time, the majority of local private hospitals contain in their by-laws a provision that a physician in order to practice in the hospital must be a member or qualified for membership in his or her local Medical Society.

Only three of the local hospitals, (Columbia, Sibley and George Washington) have not followed this recommendation of the American Medical Association.

All of the local private hospitals are cooperating fully with the Medical Society in respect to Group Health Association, Inc. At the present time only one of the local hospitals has on its staff list the name of a physician connected with Group Health Association, Inc. This hospital does not revise its staff list annually, as do the other hos-

pitals, but it has assured the Chairman of the Hospital Committee that steps have been taken to deny this physician hospital privileges.

The Hospital Committee urges that the Medical Society continue their full cooperation and avoid conflict with any of the local private hospitals.

J. Ogle Warfield, Jr., Chairman, Hospital Committee."

Gov. Ex. 325 is the transcript of the proceedings of the first session of the case before the executive committee of the Medical Society of the District of Columbia entitled "Compensation, Contract and Industrial Medicine Committee of the District of Columbia Medical Society, Complainant, v. Allen E. Lee and Mario Scandiffio, defendants, at the session held Monday, December 6, 1937, in the hearing room of the Medical Society. Excerpts from Government Exhibit 325 were read as follows:

"The above-entitled matter came on for hearing before the Executive Committee of the Medical Society of the District of Columbia, pursuant to notice, at 8 o'clock p. m.

Present: E. Hiram Reede (Chairman), John A. Reed, Henry B. Schreiber, Raymond T. Holden, Jr., William T. Gill, Jr., Thomas E. Neill, C. N. Chipman, William M. Sprigg, F. X. McGovern, H. C. Macatee, Sterling Ruffin, C. B. Conklin, and R. Arthur Hooe."

Gov. Ex. 326 is the transcript of the proceedings of the second session of the case on December 10, 1937, in the hearing room of the District Medical Society.

An excerpt from Gov. Ex. 326 was read to the jury as follows:

"The hearing in the above-entitled matter before the Executive Committee of the Medical Society of the District of Columbia was resumed, pursuant to the adjournment, at 8 p. m.

Present: E. Hiram Reede (Chairman), Raymond T. Holden, Jr., F. X. McGovern, Daniel L. Borden, Henry R. Schreiber, William M. Sprigg, Henry C. Macatee, R. Arthur Hooe, C. N. Chipman, John A. Reed, R. Lomax Wells, Earle G. Breeding, and C. B. Conklin."

Gov. Ex. 327 is the transcript of the proceedings of the third session of the case, held in the hearing room of the

District Medical Society on December 16, 1937. Excerpt from Gov. Ex. 327 was read to the jury as follows:

"The hearing in the above-entitled matter before the Executive Commitee of the Medical Society of the District of Columbia was resumed, pursuant to the adjournment, at 8 o'clock p. m.

Present: E. Hiram Reede (Chairman), Daniel L. Borden, C. N. Chipman, C. B. Conklin, H. A. Fowler, R. T. Holden, Jr., R. Arthur Hooe, H. C. Macatee, F. X. McGovern, Thomas E. Neill, John A. Reed, and Sterling Ruffin."

Gov. Ex. 328 is the transcript of the proceedings of the fourth session of the case, held in the hearing room of the District Medical Society on December 20, 1937. Excerpt from Gov. Ex. 328 was read to the jury as follows:

"The above-entitled matter came on for further hearing before the Executive Committee of the Medical Society of the District of Columbia pursuant to adjournment, at 8 o'clock p. m.

Present: E. Hiram Reede (Chairman), Daniel L. Borden, C. N. Chipman, C. B. Conklin, H. A. Fowler, R. T. Holden, Jr., R. Arthur Hooe, F. X. McGovern, Thomas E. Neill, John A. Reed, Sterling Ruffin, and W. M. Sprigg."

Gov. Ex. 37 was read from to the jury as follows:

"Minutes of the stated meeting of the Medical Society of the District of Columbia, held Wednesday, March 2, 1938. (Excerpt)

Dr. Daniel B. Moffett, First Vice President, presiding.

Present: Drs. Edgar M. McPeak, James A. Cannon, A. L. Stavely, Luther H. Reichelderfer, William J. Mallory, Don Johnston, Thomas C. Thompson, R. Arthur Hooe, Jerome F. Crowley, Henry A. Montat, Harry A. Spigel, Victor B. Reach, J. Lawn Thompson, A. Frances Foye, William Gerry Morgan, H. C. Macatee, Arch L. Riddick, John H. Trinder, Oscar B. Hunter, Thomas E. Mattingly, W. C. Gwynn, and other members to the number of about 150.

The Minutes of the preceding meeting, held February 23, were read and approved.

* * * Dr. Sprigg read from the agenda the notice sent to all members as follows:

Notice to all members:

You are hereby notified that pursuant to Chapter X, Article II, of the Constitution of the Society, the report, finding and recommendation of the Executive Committee upon the charges made in writing under date of November 22, 1937, by the Compensation, Contract and Industrial Medicine Committee against Mario Scandiffio, M. D., member of the Society, specifically charging him with having violated Chapter IX, Article III, Sections 1 and 2, and Chapter IX, Article IV, Section 5, of the Constitution of the Society, will be submitted at a meeting of the Society to be held Wednesday, March 2, 1938, at 8 P. M., in the Medical Society Building, for appropriate action by the Society pursuant to its Constitution.

Dr. Sprigg, in continuing, read the following report, finding and recommendation of the Executive Committee:

Washington, D. C., February 21, 1938.

The Medical Society of the District of Columbia.

In the matter of Mario Scandiffio, M. D.

Whereas, the Compensation, Contract and Industrial Medicine Committee, by its Chairman, R. Arthur Hooe, M. D., under date of November 22, 1937, did submit in writing to the Executive Committee charges against Mario Scandiffio, M. D., a member of the Medical Society of the District of Columbia, specifically charging him with having violated Chapter IX, Article III, Section 1 and 2, and Chapter IX, Article IV, Section 5, of the Constitution of the Society.

And Whereas, after due notice to the said Mario Scandiffio, M. D., the Executive Committee did hold hearings at which the said Mario Scandiffio, M. D., with his counsel, did appear, did testify in his own behalf, did produce witnesses in his defense, and was accorded full and fair hearing in response to said charges; the said charges were fully and impartially investigated, and at the conclusion of the said hearings, arguments, both oral and written, were submitted by counsel for said Mario Scandiffio, M. D.

Thereafter, all of the evidence adduced at the said hearings was duly considered by the Executive Committee, and upon consideration thereof, the said Executive Committee, by more than a two thirds vote, finds the said Mario Scan-

diffio, M. D., guilty of violating Chapter IX, Article III, Sections 1 and 2, and Chapter IX, Article IV, Section 5, of the Constitution of the Medical Society of the District of Columbia, as charged by the Compensation, Contract and Industrial Medicine Committee, and recommends that he be expelled from said Society.

And it is further ordered, that the report, findings and recommendation of the Executive Committee be submitted in writing to the Medical Society of the District of Columbia at its next regular business meeting for such action as may be deemed proper pursuant to its Constitution.

(Signed.) Wm. Mercer Sprigg, Chairman, Executive Committee."

Dr. Sprigg made a motion to the effect that the report of the Executive Committee be received and that the matter of the recommendation be brought up for action by the Society at the meeting to be held on March 16, 1938. Seconded, and finally unanimously adopted.

* * * * * * *

Dr. R. Arthur Hooe was recognized. He stated that from time to time he and members of the Compensation, Contract and Industrial Medicine Committee, have been approached by members of the Society, stating that Dr. So-and-So is doing refraction work, performing surgical operations, or doing eye, ear and throat work for Group Health Clinic. The question is invariably asked of the committee as to what it intends to do about it. Dr. Hooe said he, upon further inquiry of the member of the Society, is told that his information is all hearsay. Dr. Hooe urged the members to get facts and not hearsay evidence, as hearsay evidence was of no value."

"Minutes of the Meeting of the Medical Society of the District of Columbia, Held March 16, 1938. (Excerpt)

Dr. Thomas E. Neill, President, presiding.

Present: Drs. William J. Mallory, John D. Thomas, John B. Nichols, Henry B. Gwynn, John H. Trinder, Prentiss Willson, E. Hiram Reede, H. H. Schoenfeld, E. J. Cunning, H. S. Bernton, F. X. McGovern, Thomas E. Mattingly, Grant S. Barnhart, George R. Trible, Worth B. Daniels, Alma Jane Speer, Edmund M. Ellerson, Marvin M. McLean,

Frank L. Williman, J. A. Murphy, and other members to the number of about 175.

The Minutes of the preceding meetings held March 2 and March 9 were read and approved. One correction was suggested by Dr. J. H. Trinder, who stated that he did not make the motion concerning Dr. Hall's application. The minutes were approved with correction.

* * * * * * *

The Chairman of the Executive Committee was called on for report.

Dr. W. M. Sprigg pointed out that the recommendations of the Executive Committee were presented to the Society on March 2, 1938, are in the hands of the Secretary and they now belong to the Society.

The Chair stated that the business to be taken up tonight had no legal aspects whatsoever. It is a question of the Society following the Constitution and By-laws. Further, that all the newspaper notoriety did not mean a thing and had nothing to do with what the Society decides to do.

The Chair declared the question before the house was the dismissal of Dr. Mario Scandiffio as a member of the Society.

In the discussion, Dr. Sprigg pointed out that the report, findings and recommendation of the Executive Committee were read by the Secretary in the minutes of March 2. He thought someone might want to have them re-read.

Motion was made that the recommendation of the Executive Committee be accepted. Seconded.

A member of the Society would inquire who Dr. Scandiffio is and whether or not he should be here tonight to be given a proper hearing. It would seem to him to be most improper to act on this matter without the gentleman being present.

Dr. Sprigg would call the attention of those present to the provisions of the Constitution of the Society. He would suggest that the member familiarize himself with the Constitution. He pointed out that Dr. Scandiffio had had a hearing before the Executive Committee, represented by his counsel, which hearings lasted over a period of 4 or 5 weeks. Dr. Sprigg felt the member opposing action tonight was out of order.

Dr. F. J. Gunning thought the gentleman was perfectly proper in questioning the procedure, and agreed that Dr. Scandiffio should be present tonight. He referred to his

own case, some years ago, when he was exposed to some controversy over the provisions in the Constitution. He was of the opinion that the Constitution of the Society gives the member no rights.

Dr. J. Lawn Thompson rose to a point of order, stating that the doctor was not speaking to the question before the house.

Motion was made that discussions be limited to two minutes each, except by vote of the Society. Seconded and adopted.

Dr. H. H. Schoenfeld was of the opinion that the original question was not completely answered. He stated that the fact was that Dr. Scandiffio had knowledge of this meeting tonight, had received notice of the business to be considered, had the right and privilege of appearing and appealing directly to the Society if he so desired. In view of the fact that he has not taken advantage of that opportunity it was his opinion that the Society could proceed with the consideration of the subject.

Dr. Thomas E. Mattingly was recognized. He said it might seem as though he was contradicting himself because only a few nights ago he had presented certain resolutions for consideration of the Society concerning patients of Group Health Association, Inc., being admitted to hospitals, but he would make a recommendation that Dr. Scandiffio be suspended from membership. Dr. Mattingly called attention to a radio broadcast today which told what was going to happen in the event the Society expelled the Doctor in question; also there appeared in the Star, News and Times newspaper write-ups concerning the case, in other words, before the Society had taken a vote the case was tried in the newspapers.

The Chair stated that the question before the house was the dismissal of Dr. Mario Scandiffio for violation of Chapter IX, Article III, Sections 1 and 2, and Chapter IX, Article IV, Section 5, of the Constitution of the Society. Vote was taken, and the motion was adopted by a vote of 148 to 5.

The Chair, therefore, declared that Dr. Mario Scandiffio was no longer a member of the Society."

Gov. Ex. 147, a copy of a letter from Dr. Olin West to Dr. George Edward Follansbee, dated April 21, 1938, was read to the jury as follows:

"DEAR DOCTOR FOLLANSBEE:

I am enclosing a telegram received this morning from Dr. A. T. Talley, Chairman of the Board of Censors, Harris County Medical Society, Houston, Texas. Doctor Talley has been informed that this telegram has been referred to you as Chairman of the Judicial Council.

As I understand the matter, Dr. Raymond E. Selders, a member of the Harris County Medical Society, accepted a position with the Group Health Association, Inc., in Washington, D. C., a corporation now engaged in the practice of medicine in the District of Columbia. You may recall that this corporation was financed by the Home Loan Bank Board through the Home Owners Loan Corporation and that this action was rather severely criticized by an official committee of Congress.

We were definitely informed that the United States District Attorney for the District of Columbia has ruled that the Home Loan Bank Board had no legal authority for providing funds for the support of the Group Health Association, Inc., that official rulings have been issued by duly constituted authorities in Washington to the effect that corporations cannot legally engage in the practice of medicine, and that the Group Health Association, Inc., is operating in violation of the insurance laws of the District of Columbia.

The Medical Society of the District of Columbia has, as I understand it, expelled one member who accepted employment with the Group Health Association, Inc., and this action has created a great storm in Washington, which has been widely and persistently heralded in the local press. As stated in Doctor Talley's telegram, charges have been preferred against Doctor Selders, a member of the Harris County Medical Society, and apparently the board of censors of that society is undecided as to what should be done. It seems to me that the first thing the board of censors should do is to take the matter up with the council of the State Medical Association of Texas, but apparently the members of the board of censors feel that, as Doctor Selders is acting as an agent of the Group Health Association, Inc., outside of Texas, the matter is one for determination by the Judicial Council of the American Medical Association.

Very sincerely yours, Dr. West."

Gov. Ex. 37 was read from to the jury as follows:

"Minutes of the regular meeting of the Executive Committee of the District Medical Society, March 28, 1938. (Excerpt.)

Dr. William Mercer Sprigg, Chairman, presiding.

Present: Drs. S. A. Alexander, C. N. Chipman, William T. Gill, Jr., A. C. Gray, Raymond T. Holden, Thomas E. Neill, John A. Reed, E. Hiram Reede, Joseph E. Wall, C. B. Conklin, R. Arthur Hooe, and F. X. McGovern.

The minutes of the preceding meeting, held March 21, 1938, were read.

. . . . . .

Dr. J. Ogle Warfield, Jr., Chairman of the Hospital Committee, made a report relative to the first resolution that had been proposed by Dr. Thomas E. Mattingly, namely:"

Mr. Lewin: I am a little bit in a quandary as to what to do about this. This is offered as to all the defendants against whom there is a prima facie case. It is identical with the exhibit already shown to the jury, with the exception of the changes in ink. Do you think I had better read it? I want to be fair.

Mr. Richardson: It has just been read five minutes ago.

Mr. Leahy: It is all right to read it.

Mr. Kelleher: Mr. Leahy wants it read.

The Court: There is no point in taking the time unless it will serve some purpose.

Mr. Kelleher: Mr. Leahy wants it read.

Mr. Lewin: I will read it.

The report of Dr. J. Ogle Warfield, Jr., Chairman of the Hospital Committee, heretofore read in evidence, was reread to the jury.

"Relative to Resolution No. 2 offered by Dr. Thomas E. Mattingly, as follows:

'That the proper agency of the Society take immediate measures to ascertain if any member or members of the Society are party to secret understandings and unethical arrangements with Group Health Association, Inc., whereby Group Health patients are admitted to Washington hospitals and treated under the service or supervision of Medical Society members possessing hospital privileges.'

Dr. Hooe, reporting for the Compensation, Contract and Industrial Medicine Committee, to which the resolution had

been referred, stated that he considered the resolution to be ambiguous and further that he did not believe it was in the province of his committee to make investigations or report except upon authentic information received from members.

A motion was made, which was seconded, to lay this whole matter on the table. Adopted.

Dr. Hooe, in continuing, stated that a member came to him and stated that he had received a check for $16 from Group Health Association. He asked Dr. Hooe whether he should accept it. This was but one of many similar cases. Dr. Hooe, after deliberating, informed the member that it was all right for him to take the $16 check and have it cashed in view of there being nothing to indicate that the doctor had been in consultation with Group Health Association employees and that the patient was to all intents and purposes a private case, although paid for by the Group Health Association.

A member present stated that the Group Health Association had claimed to have paid over $3,000 in checks in this way."

Those minutes are signed by C. B. Conklin, Secretary.

"Minutes of the Special Meeting of the Executive Committee of the District Medical Society, March 29, 1938. (Excerpt.)

Dr. William Mercer Sprigg, Chairman, presiding.

Present: Drs. A. B. Bennett, Daniel L. Borden, C. N. Chipman, Harry A. Fowler, William T. Gill., Jr., Raymond T. Holden, R. Arthur Hooe, H. C. Macatee, F. X. McGovern, J. P. H. Mercer, Thomas E. Neill, John A. Reed, H. R. Schreiber, Joseph S. Wall, R. Lomax Wells, C. B. Conklin. In addition there were present Drs. J. Russell Verbrycke, Jr., Mr. Charles S. Baker, and Mr. F. A. Fenning, by invitation.

The Chair stated that should anyone like to hear a re-reading of the minutes of the meeting held March 21, 1938, the minutes would be re-read. No one seemed to wish this done. The minutes were not re-read.

* * * * * * * * *

Mr. Fenning was recognized. He stated that the Group Health Association, among other things had a drug store where, he was informed, prices were about one-third that of Peoples Drug Stores.

It was thought by many present that if Peoples Drug Stores authorities, Mr. Gibbs in particular, were notified some action might be taken.

Dr. H. A. Fowler stated that he was sure that he could make contact with Mr. Gibbs and that he could have some influence with him."

Minutes are signed "C. B. Conklin, Secretary."

"Minutes of the business meeting of the Medical Society of April 6, 1938. (Excerpt.)

Dr. Thomas E. Neill, President, presiding.

Present: Drs. A. L. Stavely, James M. Moser, Charles W. Hyde, James A. Gannon, C. X. Chipman, Thomas E. Mattingly, J. Ogle Warfield, Jr., J. Lawn Thompson, Frank D. Costenbader, Charles S. White, Jerome F. Crowley, Marvin M. McLean, Charles P. Cake, J. Russell Verbrycke, Jr., Lyle M. Mason, Earl R. Templeton, V. R. Alfaro, Sterling Ruffin, William P. Herbst, Jr., John H. Trinder, John A. Reed, and other members to the number of about 85.

The Chair appointed Dr. E. Hiram Reede to act as Secretary in the absence of Dr. C. B. Conklin, who was attending a convention in New York City.

The minutes of the preceding meetings of the Society, held March 23 and March 30, were read and approved.

. . . . . .

Dr. John H. Trinder made a motion that the Society go into executive session and that Dr. W. C. Woodward and the Public Relations Counsel, Mr. Fulton Lewis, Jr., be allowed to remain. Seconded and adopted.

The Chair appointed Dr. Benjamin F. Dean to act as Sergeant-at-Arms.

Dr. J. Ogle Warfield, Jr., Chairman of the Hospital Committee, read the following report:"

Mr. Lewin: I will not read that again, your Honor. That is the same report, this time being made to the Medical Society. I read the one made to the Executive Committee (reading further):

"Upon motion, duly seconded, the report of the Hospital Committee was adopted."

. . . . . .

The minutes are signed by C. B. Conklin, Secretary, and D. E. Everett, underneath.

Mr. Leahy: Will you read from the bottom of page 6 and at the top of page 7? It is only about 7 or 8 lines, right after "Upon motion, duly seconded, the report of the Hospital Committee was adopted."

Mr. Lewin (reading):

"Dr. Marvin M. McLean would inquire if there was not a provision in the Constitution which requires the Hospital Committee to annually approve the various hospitals.

The President stated that there was no such thing in the Constitution.

Dr. Sprigg expressed the opinion that it should be clear that the hospitals have a perfect right to decide who should practice in their institutions. The courtesy staff has to be revised every year. One of the hospitals has had members of the profession on its staff for years even though they have not been members of the Society."

MARY G. THORNHILL, a witness for the United States.

Direct examination.

By Mr. Kelleher:

I have been employed by Dr. Warren Sager as a technician for ten years. I am familiar with his signature. I act for him in a secretarial capacity. The signature at the bottom of Gov. Ex. 313 is Dr. Sager's; the signature on Gov. Ex. 306 is Dr. Sager's.

The handwritten notation at the bottom of Gov. Ex. 313; Gov. Exs. 305 and 306; Gov. Ex. 440-A, on the basis of a comparison of a signature on Gov. Ex. 238, were offered in evidence. Gov. Ex. 441-A, on the basis of a comparison of a signature thereon with that on Gov. Ex. 11; and Gov. Ex. 442-A, were offered in evidence.

The defendants objected on the ground of incompetency, irrelevancy, and immateriality, and that the documents were hearsay, as no conspiracy had been proven. These objections were overruled and exception noted.

The notations on the bottom of Gov. Ex. 313 and Gov. Exs. 305, 306, 440A, 441A, and 442A were received in evidence.

Notation on bottom of Gov. Ex. 313 was read to the jury as follows:

"The surgeon for HOLC has been rejected. No other application has been received.

Dr. Warren Sager."

Gov. Exs. 305 and 306 (two pages of one document, constituting a questionnaire) were read to the jury as follows:

"Questionnaire—George Washington University Hospital

1. What communication or inquiry has your hospital had from Group Health Association, Inc.?

Request for hospital privileges for Dr. Selders.

2. What reply has your hospital made to Group Health Association, Inc.?

Application has been referred to the Staff and the Committee on Hospital Privileges for action.

3. Which, if any of the following Doctors are now members of your Medical Staff in any capacity or have privileges to practice in your hospital?

Dr. Henry Rolf Brown,
Dr. Allen E. Lee,
Dr. Mario Scandiffio,
Dr. R. Stephen Hulburt,
Dr. Raymond E. Selders,
Dr. Edmond D. Wells.

None.

4. Is your hospital in sympathy with the policies of the Medical Society of D. C.?

Yes.

5. Is the entire medical staff of your hospital reappointed annually?

Yes.

6. Are appointments to the medical staff of your hospital approved by the Medical Staff?

Yes.

7. What governing body of your hospital finally makes appointments to the medical staff?

Medical Staff.

8. Does your hospital require membership in the Medical Soc. of D. C.?

No.

9. Does your hospital require membership in the Medical Soc. of D. C. as a qualification for appointment to its medical staff?

No.

10. What percentage of the entire medical staff of your hospital are members of the Medical Society of D. C.?

289 members of D. C. Med. Society; 33 not members.

10. Does your hospital require membership in the AMA as a qualification for appointment to its medical staff?

No.

11. What percentage of the entire medical staff of your hospital are members of the AMA?

———.

12. Is your hospital a beneficiary of Community Chest funds?

Yes.

13. Will you kindly make any other inquiry that you think might be pertinent at this time?

W. Warren Sager."

DR. FREDERICK C. FISHBACK, a witness for the United States.

Direct examination.

By Mr. Kelleher:

I am a doctor. From April, 1936, to April, 1937, I was secretary of the Washington Academy of Surgery. I was acting secretary in December, 1937.

Gov. Ex. 443-A looks like a roster of the charter members of the Academy in 1934, through 1938 and 1940. During the period I was secretary, the following were members of the Academy:

"Dr. Walter Atkinson, Dr. Garnett Ault, Dr. J. B. Bogan, Dr. Daniel Borden, Dr. Crenshaw Briggs, Dr. E. A. Cafritz, Dr. James Cahill, Dr. William W. Chase, Dr. J. Lloyd Collins, Dr. Edgar W. Davis, Dr. Harry Davis, Dr. Benjamin Dean, myself, Dr. Harry Fowler, Dr. Oscar Fulcher, Dr. J. A. Gannon, Dr. Frank Hagner, Dr. Custis Lee Hall, Dr. Ralph J. Haws, Dr. Valentine Hess, Dr. Edmund Morgan,

Dr. Alec Horwitz, Dr. E. L. Howes, Dr. Tom Kelly was a member but was apparently dropped, Dr. Harry H. Kerr, Dr. J. Kreiselman, Dr. G. W. Leadbetter, Dr. John H. Lyons, Dr. William Marbury, Dr. Francis McGovern, Dr. Robert E. Moran, Dr. R. W. Morris, Dr. J. S. Neviaser, Dr. G. K. Nutting, Dr. Paul Putski, Dr. F. A. Reuter, Dr. A. L. Riddick, Dr. Warren Sager, Dr. Fred Sanderson, Dr. H. H. Schoenfeld, Dr. J. B. Shearer, Dr. J. J. Shugrue, Dr. John Talbot, Dr. Lewis Taylor, Dr. G. Tully Vaughan, Dr. J. Ogle Warfield, also a defendant, Dr. Otto Warner, Dr. James W. Watts, Dr. W. Webb, Dr. Charles Stanley White."

As secretary I wrote up the minutes of the meetings of the Academy. I signed Gov. Ex. 444-A, the minutes of the Academy's meeting of September 10, 1937. Gov. Ex. 445-A is a carbon of a letter I wrote to the superintendent of George Washington University Hospital on December 8, 1937. Gov. Ex. 446-A is a carbon of a letter I wrote on December 9, 1937, addressed to "Dear John", meaning Dr. John Lyons, a member of the Committee on Hospital Privileges. Gov. Ex. 447-A is a carbon of a letter I think I wrote to Colonel Ashburn, Columbia Hospital. Gov. Ex. 448-A is a copy of a letter I think I wrote to Providence Hospital. Gov. Ex. 449-A is a carbon of a letter I think I wrote to Dr. Hooe. Gov. Ex. 450-A is a carbon of a letter I think I wrote to the superintendent of Garfield Hospital.

Cross-examination.

By Mr. Leahy:

I am still a member of the Academy but no longer secretary. The Washington Academy of Surgery is a scientific society made up of men here in Washington doing general surgery and meets four times a year. My duties, as secretary, were to record the minutes of the meetings, get out notices of the meetings, take care of three dinner meetings and the fourth meeting was just a scientific meeting. I am not a stenographer and in taking the minutes I jotted down the substance of what I thought occurred. The minutes were submitted for approval at the next meeting, although they frequently were not read. There were from 42 to 44 members in 1937 and 1938. The prime purpose and object of the meetings were to discuss various scientific papers. As secretary of the Academy I had sent to me applications from

various men wishing privileges in surgery. Those which had to do with general surgery, in contrast with gynecology or orthopedic surgery, were sent to the Credentials Committee as an advisory committee. I would send the applications to Dr. Lyons, and eventually they would come back, and then I would write a letter of transmittal to the superintendent of the hospital. I was not a member of the Credentials Committee.

The notes I took of the meeting of December 10 were probably transcribed the next day, when I actually typed them. The subject matters contained in Gov. Exs. 447-A, 448-A, 449-A, and 450-A did not come to my personal consideration for decision, and in sending out the letter I was merely a transmitting officer, and that was all. I think there are other records back of these letters in the possession of the hospitals and some in our files.

Gov. Exs. 447-A, 448-A, 449-A, 450-A, 445-A, 446-A, and 444-A were thereupon offered in evidence. Objection was made on the ground of incompetency, irrelevancy, and immateriality, and that the letters were hearsay as no conspiracy had been proven. The objection was overruled, and exception noted.

Gov. Exs. 444-A-450-A, inclusive, were received in evidence.

JOSEPH E. RANDALL, a witness for the United States,

Direct examination.

By Mr. Lewin:

I am a member of the board of National Homeopathic Hospital. I was president of the hospital in 1936 and through 1937. The hospital is 55 years old, and does a general hospital business. It has beds to take care of 70 patients. It is managed by a board of directors. Dr. J. B. Gregg Custis has been chief of the medical staff for some time, and was in that office in 1937 and 1938, and was also a member of the board of trustees. The only active members of the staff of the hospital in 1937 and 1938 that I know are Drs. Custis, Davidson, Sappington, Shearer, Cajigas, Warner, Swormstedt, Birdsall, Leadbetter, Cox, and Dr. Roger O'Donnell.

The accounts of National Homeopathic were audited by the firm of Ball, Blum & Company. Gov. Ex. 452 looks like their report.

I attended a large meeting at the Mayflower Hotel on October 30, 1937, where the Group Health project was discussed. After that meeting I talked with Mr. Penniman, president of Group Health. At the time of this conversation I was desirous of getting Group Health patients in our hospital. I expressed this desire to Mr. Penniman. I told Mr. Penniman we would like to have some of his business at National Homeopathic, as I thought they would have some patients needing hospitalization, and when the concern could pay cash we would be glad to have them at our regular prices. I visited the Group Health clinic on Eye Street and was shown through by Dr. Brown, the medical director, and it looked like a wonderful place.

I presided at a meeting of the board of trustees of the hospital on November 4, 1937. Dr. J. B. Gregg Custis was there. The matter was brought up of changing the requirements for members of our staff. Up to that time we required of members of our staff that they be a graduate of a recognized medical school, a member of a medical society, and have a couple of years' experience. Under that rule we did not require membership in any specific organization, and it may have been in any medical society, either home town or any place.

At this point the remainder of the testimony of the witness was limited against Dr. Custis.

Dr. Custis, without mentioning Group Health, brought up at the time a suggested change in our requirements. He said that the Society was going to or had made changes in their requirements and required all their doctors—the doctors of the local society—to be members of the boards of hospitals; to have on their staffs only members of the local society. He offered a resolution for a change in our requirements at that time, stating it was necessary that it be passed, otherwise most of the members of the staff would have to quit. That fall we made the change, the reason being that the majority of the board voted for it. I do not know what induced the board to change its rules.

The board of trustees of the hospital has a secretary, Mrs. Doris W. Thompson, and her duties are to keep a record of the meetings and send out notices to the different mem-

bers of the board; it was the usual course of business of the board to take down minutes. I recognize the signature of Mrs. Thompson to the minutes of the meeting of the Board of November 4, 1937, and they sound very much like the minutes of that meeting.

Gov. Ex. 453-A, being the minute book of the board of trustees of the National Homeopathic Hospital, showing the minutes of the meeting of November 4, 1937, was offered in evidence. Defendants objected on the grounds that they were incompetent, irrelevant, and immaterial and were hearsay, as no conspiracy had been proven. The objection was overruled and exception noted. Gov. Ex. 453-A was read from to the jury as follows:

"A meeting of the Board of Trustees of the National Homeopathic Hospital was held at the hospital at 12 noon, November 4, 1937.

Present—Colonel Randall, Presiding; Mrs. Dodge, Mrs. Zoller; Mr. Lauris McLachlen; Mr. Brown; Dr. Custis; Mr. Doing; Mr. and Mrs. Ross Thompson. * * *

Colonel Randall told of having attended a meeting to discuss a proposed clinic for the HOLC. Sponsors of this clinic wanted to know if it would be possible to send patients to our hospital and have their doctors attend the patients. The board held open discussion on the subject and decided that as long as this clinic is not accepted by the District Medical Society that we cannot recognize it. They pay the doctors' salaries, charge monthly fees, do no charity work, and the men on their medical staff are not recognized by the District Medical Society. They want the hospitals to accept patients at the prevailing rates. If at a later date the District Medical Society accepts and approves this clinic, the board of trustees will consider the plan."

It was Dr. Custis who stated at the meeting, "We cannot recognize it" (Group Health Clinic). I recognize Mrs. Thompson's signature to the minutes of the meeting of the board of trustees of the hospital of December 30, 1937 (Gov. Ex. 454-A). They look like the minutes regularly kept by Mrs. Thompson pursuant to her duty as secretary of the board.

Gov. Ex. 454-A was offered in evidence. Defendants objected on the grounds that said evidence is incompetent, irrelevant, and immaterial, and hearsay, as no conspiracy had

been proven. The objection was overruled and exception noted.

Gov. Ex. 454-A was received in evidence and read from to the jury as follows:

"Dec. 30, 1937.

A meeting of the Board of Trustees of the National Homeopathic Hospital was held at 12 noon, December 30, 1937, at the hospital. Present: Col. Randall, presiding; Mrs. Dodge, Dr. Custis; Mr. McRae; Mr. Brown; Mr. Delos Smith; Mr. McKee; Mr. McLachlen; Mr. Doing and Mrs. Thompson.

The minutes of the previous meeting were read and accepted and the Treasurer's report was read. • • •

A recommendation from the Executive Staff meeting that the Courtesy Staff be again accepted, with the exception of the Doctors who are not recognized by an organized Medical Society in Washington, D. C., and vicinity. These Doctors are to be given three months grace in which to join such a Medical Society. Dr. Custis moved that this recommendation from the Executive Staff be acted upon. It was duly seconded and carried. Mr. McLachlen suggested that the Hospital write letters to the accepted Doctors on the Courtesy Staff informing them of their acceptance and asking for their cooperation with the Hospital."

The executive staff of Homeopathic Hospital is composed solely of doctors on the staff. In the fall of 1937 Miss Frances Whitlock Hall was assistant superintendent of the hospital. I recognize her signature on the bottom of Gov. Ex. 339-A. At the time of the writing of the letter she was superintendent.

Gov. Ex. 339-A was offered in evidence. Defendants objected on the grounds that said letter is incompetent, irrelevant, and immaterial, and hearsay, as no conspiracy had been proven. The objection was overruled and exception noted.

Gov. Ex. 339-A was read to the jury as follows:

"November 9, 1937.

Dr. C. B. Conklin, Secretary, Medical Society of the District of Columbia, 1718 M Street, N. W., Washington, D. C.

DEAR DR. CONKLIN:

As the attitude of the National Homeopathic Hospital toward the Group Health Association is apparently not clear

to various members of the District Medical Society, I am enclosing a copy of a letter sent today to their president, Mr. Penniman, by Dr. J. B. Gregg Custis, executive officer of our board of trustees.

Yours very truly, Frances Whitlock Hall, Superintendent."

Mrs. Treasure succeeded Miss Hall as superintendent of the hospital. I wasn't a member of the executive committee of doctors. The main items of expense of the hospital during 1937 were general operating expenses such as salaries, food, coal, electric light bills, and there was an expenditure of $14,000 that year for a new heating system, and supplies such as medicine, sheets, and paints had to be bought. The main source of revenue was the rent received from patients for the rooms. We have expenses for running the office, but the officers receive no pay. We have expenses for medical and surgical care, nursing care, anesthesia, operating room, a drug section, X-rays and building maintenance.

Cross-examination.

By Mr. Leahy:

From 1936 to 1938 I was president of the board of trustees of Homeopathic. Mrs. Dodge is president of the ladies' board of the hospital. Other members of the board are Dr. Custis, Dr. McRae, Mr. T. J. Brown, Mr. Delos Smith, Mr. McKee, vice president of the Security Savings Bank, Mr. Lanier P. McLachlen, president of the McLachlen Banking Corporation, Mr. Doing, treasurer and vice president of the Washington Loan & Trust. The doctors I referred to that I knew at the hospital are the most active, and bring in the most patients, as I remember. Prior to the suggested change in the requirements discussed at the meeting of November 4, 1937, a doctor just couldn't come into the hospital with a patient and treat the patient, but before he could come in and treat a patient he was required to make application to the board for privileges. That application would be referred to the board of doctors who would pass upon it, and whatever action they would take and report to the board of trustees was generally upheld. I have been connected with the Homeopathic for five years, and the practice I have outlined has existed during that

time. The hospital staff members were passed on each year by our board. Each applicant for privileges was supposed to renew his application each year, but for a while we didn't adhere to that, although we are doing it now. An applicant for admission to the staff was required to be a graduate of a recognized medical school; to have served the necessary internship; to be experienced in the line of work he intended to do; and belong to some medical society; as we didn't confine our hospital to homeopathics, but admitted allopathics as well, membership in a homeopathic or allopathic society would qualify him, provided the doctor had the other necessary qualifications.

During the time I was president of the board we didn't have any trouble with the District Medical Society or the AMA about any member of our staff being a member of the homeopathic society, and we were in good graces with them.

The question of changing the requirements for applicants for admission to either staff in the hospital came up on the evening of November 4, 1937. I am sure it was brought up at that meeting because I was surprised later to learn that the Medical Society had not taken that action and was still discussing the matter at their meeting of November 11, which I attended. There was a full discussion at the November 4 meeting and a difference of opinion among the members as to whether or not the hospital would recognize Group Health before it was accepted by the District Medical Society. I don't remember Dr. Custis' exact words, but it was that this was an organization in business and that they were not acceptable to the Medical Society, and then the Medical Society could not have a proficient staff if we accepted doctors from Group Health; and if we did accept them, the doctors who belonged to the Medical Association would have to resign from our Board. I think it was discussed that Group Health was probably illegal, and that it was financed by monies advanced by HOLC, and that the fees in the shape of dues which Group Health was charging would not be sufficient to carry them on once the money they got from HOLC was exhausted. The opinions I voiced and the opinion Dr. Custis voiced on both sides were considered by the full board, and of the nine members present, seven agreed with the views expressed by Dr. Custis, but after the vote was taken we were all for the whole as the action was then the action of the board of trustees, and

the matter was not further discussed. Dr. Custis said at the discussion that Group Health was very probably illegally conducting business, and said something about the finances of the clinic, and if the hospital at the time permitted Group Health doctors to practice in our hospital and later the medical society didn't approve the clinic, that then, under the constitution of the medical society, the doctors would be prevented from practicing in our hospital. There was a discussion about the doctors being paid salaries at Group Health and that Group Health charged monthly fees but were not going to do any charity work. Dr. Custis may have mentioned that the clinic wasn't set up to help the poor and that the poor would still be thrown back on the regular doctors who attended them. Dr. Custis took issue with me, and said in substance, "You couldn't provide good medical care for $3 a month," and the conclusion of the action at the hospital was that if at a later date the medical society approved the clinic our board would then consider the Group Health plan. At the December 30th meeting the board approved a group of doctors for privileges brought in by the executive staff of the regular staff. The recommendation for approval came from the executive staff, which was composed of about 15 or 20 doctors. I am not sure of the wording of the recommendation that came from the executive staff but they brought in a recommendation and we approved it. The term "and vicinity" would take in the homeopathic society, the medical societies of Washington, Virginia, and Maryland, and in this sense they never changed the rule. The rule meant that if some of the staff didn't belong to the District Society, the homeopathic society, or the Virginia society, they would have three months to join a medical society, but after the meeting on November 4 I considered the rule to mean the Medical Society of the District only. The minutes of the meeting of November 4 do not reflect that, and say doctors are given three months grace in which to join "such a" medical society; the minutes say "with the exception of doctors who are not recognized by a recognized medical society in Washington and vicinity," and the way the minutes read this leaves the rule that we had applied before open, that they should apply to a society in Maryland or Virginia or in the District, and that would be sufficiently adjacent, and that seems to be the requirement of Gov. Ex. 454.

All the items of expenses that I described on direct exam-

ination were made necessary in the conduct, maintenance and operation of the hospital for the sick. We do not conduct a drug store for public patronage and have merely a department where we keep some drugs. We do not run a lunch room for public use at all, and we are not buying and selling coal as a business, and there wasn't anything we did in connection with the hospital except to incur the necessary expenditures required for a proper place for the sick.

Redirect examination:

My impression from Dr. Custis' statement was that the medical society had changed its requirements or it might have been their by-laws, or something, that local medical society doctors could be on the staffs of the local hospitals only where all doctors and surgeons in the hospitals were members of the local society. That was one of the things the board was considering on the November 4 occasion concerning Group Health. Later I attended a meeting of the medical society on November 11, Armistice night, where Group Health was discussed and where the amendment adopted by our hospital was discussed.

GEORGE W. DINGLE, a witness for the United States.

Direct examination:

By Mr. Timberlake:

I am a special agent of the Federal Bureau of Investigation and have been for five and a half years. I examine questioned documents, including a comparison of known handwriting, hand printing, typewriting and mechanical impressions and other forms of document work. I attended Indiana University and received degrees of Bachelor of Arts, Master of Arts, and Doctor of Philosophy. I have been doing special work in the field of document examinations and have testified in federal courts, before federal grand juries, and by deposition in military courts.

I have examined certain documents and conclude that the handwriting appearing on Gov. Ex. 311, the signature "J. Ogle Warfield," on Gov. Ex. 313, and the handwriting on Gov. Exs. 302, 303, and 308 are by the same person.

Gov. Exs. 302, 303, and 308 were offered in evidence. Defendants objected on the ground that the same are incompetent, irrelevant, and immaterial, and hearsay, as no conspiracy had been proven. The objection was overruled and exception noted.

Gov. Ex. 302 and 303 were received in evidence and read to the jury as follows:

"Questionnaire—Garfield.

"1. What communication or inquiry has your hospital had from Group Health Association, Inc.?

"Asking to admit a Pt. & physician.

"2. What reply has your hospital made to Group Health Association, Inc.?

"Will admit Pt. Drs. must apply for priv. Dr. Selders has applied & will go thru routine.

"3. Which, if any of the following Doctors are now members of your Medical Staff in any capacity or have privileges to practice in your hospital?

"Dr. Henry Rolf Brown. —.

"Dr. Allan E. Lee. —Yes.

"Dr. Mario Scandiflio. —.

"Dr. R. Stephen Hulburt. —.

"Dr. Raymond E. Selders. —.

"Dr. Edmond D. Wells. —.

"4. Is your hospital in sympathy with the policies of the Medical Society of D. C.?

"Yes.

"5. Is the entire Medical Staff of your hospital reappointed annually?

"Yes.

"6. Are appointments to the Medical Staff of your hospital approved by The Medical Staff?

"Recommended by Med. Staff.

"7. What governing body of your hospital finally makes appointments to the Medical Staff?

"Bd. of Directors.

"8. Does your hospital require membership in the Medical Society of D. C. as a qualification for appointments to its Medical Staff?

"Yes or have applied.

"9. What percentage of the entire medical staff of your hospital are members of the Medical Society of D. C.?

"Over 75%--All recent appointments.

"10. Does your hospital require membership in the A. M. A. as a qualification for appointment to its Medical Staff?

"No, but for appts. to staff & privileges they use form recommended by A. M. A.

"11. What percentage of the entire Medical Staff of your hospital are members of the A. M. A.?

"All active staff.

"12. Is your hospital a beneficiary of Community Chest funds?

"Yes.

"13. Will you kindly make any other inquiry that you think might be pertinent at this time?"

Gov. Ex. 308 was received and read to the jury as follows:

"Questionnaire—Children's

"1. What communication or inquiry has your hospital had from Group Health Ass., Inc.?

"Requesting admission of pts. & privileges for Dr. Selders.

"2. What reply has your hospital made to Group Health Association, Inc.?

"Will admit pts. & Drs. must make regular application.

"3. Which, if any of the following Drs. are now members of your Medical Staff in any capacity or have privileges to practice in your hospital? None."

After the name of Dr. Mario Scandiffio there is the handwriting notation: "Resignation accepted."

"4. Is your hospital in sympathy with the policies of The Medical Society of D. C.?

"Yes.

"5. Is the entire Medical Staff of your hospital reappointed annually?

"Yes.

"6. Are appointments to the Medical Staff of your hospital approved by The Medical Staff?

"Yes—recommended.

"7. What governing body of your hospital finally makes appointments to the Medical Staff?

"Bd. of Directors.

"8. Does your hospital require membership in the Med. Soc. of D. C. as a qualification for appointments to its Medical Staff?

"Yes.

"9. What percentage of the entire medical staff of your hospital are members of the Medical Society of D. C.?

"100%.

"10. Does your hospital require membership in the A. M. A. as a qualification for appointment to its Medical Staff?

"No.

"11. What percentage of the entire Medical Staff of your hospital are members of the A. M. A.?

"Probably majority.

"12. Is your hospital a beneficiary of Community Chest funds?

"Yes.

"13. Will you make any other inquiry that you think might be pertinent at this time?"

EDNA H. TREASURE, a witness for the United States:

Direct examination.

By Mr. Lewin:

I am superintendent of National Homeopathic Hospital and have been for three years. In response to a subpoena I furnished Gov. Ex. 451, a roster of members and committees of the hospital, and it correctly reflects the names of all members of the medical staff of Homeopathic in the years 1937 and 1938.

Gov. Ex. 451 was offered in evidence. Defendants objected on the grounds that said document is incompetent,

irrelevant, and immaterial, and hearsay, as no conspiracy had been proven. The objection was overruled and exception noted.

(Gov. Ex. 451 was received in evidence.)

As part of my duties I attended the meetings of the executive staff. It is the usual course for me to do so as I am secretary. I took down the minutes, but not verbatim, and intended them to reflect, in substance, what transpired. From February 23, 1938, on it was customary for me to attend meetings of the executive staff and take down minutes in substance, and sign such minutes. Gov. Ex. 469 is the bound minute book of the executive staff. I prepared the minutes therein of May 17, 1938, signed them after having written them up before the next meeting, from my official notes.

From Gov. Ex. 469, the minutes of the meeting of May 17, 1938, of the executive staff, a portion was offered in evidence. Defendants objected to the same on the grounds that they were incompetent, irrelevant and immaterial, and hearsay, as no conspiracy had been proven. The objection was overruled and exception allowed.

The minutes of the meeting of May 17, 1938, of the executive staff, in Gov. Ex. 469, were read to the jury as follows:

"May 17, 1938.

"The regular meeting of the Executive Staff was held at 12:30 p. m. in the Superintendent's office, Dr. Sappington presiding.

"Applications for courtesy staff memberships were considered and approved for:

"Dr. Hyder—Normal OB medicine, anesthesia.

"Dr. Verlin E. Miles—Normal OB medicine.

"Recommendation was made that applications be approved, with the understanding that continuous service on the courtesy staff be contingent upon affiliation with only those associations approved and recognized by the Dist. Medical Society.

"A motion was made by Dr. Custis that notice of the above action be sent to all hospitals and the D. M. S."

Cross-examination.

By Mr. Leahy:

I have no independent recollection at this time of what transpired at the May 17 meeting. A quorum of the execu-

tive staff is five, and there must have been at least that many members present. The executive staff at that time consisted of Drs. W. P. Baker, J. H. Brainson, Tomas Cajigas, J. R. G. Custis, J. F. Davidson, Claude Moore, Bernard Notes, E. F. Sappington, J. P. Shearer, W. C. Sterling, and C. F. Warner.

Gov. Ex. 470 was offered in evidence on the basis of a comparison of the signature of Dr. Conklin with a number of exhibits in evidence. It was produced from the files of Georgetown Hospital in response to a subpoena.

(Gov. Ex. 470 was received in evidence.)

JUNE M. GRUBB, a witness for the United States:

Direct examination.

By Mr. Timberlake:

I am secretary to Dr. Dardinski and have been such for five months. I am familiar with his signature, and his signature appears on Gov. Ex. 471.

Gov. Ex. 471 was offered in evidence. The defendants objected on the grounds that the same was incompetent, irrelevant, and immaterial, and hearsay, as no conspiracy had been proven. The objection was overruled and exception allowed.

(Gov. Ex. 471 was received in evidence.)

BENJAMIN B. SANDIDGE, a witness for the United States:

Direct examination.

By Mr. Allen:

From January 1, 1937, to December 20, 1938, I was superintendent of Emergency Hospital. In most instances I attended executive staff meetings of the hospital. It was the custom of this staff to take regular minutes in the regular course of its business and to keep a record of those minutes. Gov. Ex. 472 is a minute book of the executive staff of Emergency Hospital. The minutes therein of the

meeting of February 18, 1938, I believe, are signed by Dr. John H. Lyons, secretary of the staff. The minutes therein of June 1, 1938, are true and correct. This book was produced in response to a subpoena by the hospital.

From Gov. Ex. 472 the minutes of the meetings of February 18, 1938, and June 1, 1938, were offered in evidence. Defendants objected to the same on the grounds that they were incompetent, irrelevant, and immaterial, and hearsay, as no conspiracy had been proven. The further objection was made that the matters stated in the minutes are mere recitals and not formal resolutions; that the minutes are hearsay; that no alleged conspirator was present; that no conspiracy involving the hospital had been proven. The objections were overruled and exception noted.

(The minutes of the meeting of February 18, 1938, and June 1, 1938, from Gov. Ex. 472, were received in evidence.)

Gov. Ex. 473 is a copy of a letter to Dr. Lee. Gov. Ex. 474 is a true copy of a letter dated November 10, 1937, from B. B. Sandidge to Dr. Allen E. Lee.

Gov. Exs. 473 and 474 were offered in evidence. Defendants objected on the grounds that said letters were incompetent, irrelevant, and immaterial, and hearsay, as no conspiracy had been proven. The objection was overruled and exception noted.

Gov. Ex. 475, which is the original of Gov. Ex. 78, is a letter Major Blair asked me to sign and which I did in his name.

Gov. Ex. 475, a letter from President Blair of Emergency Hospital to the president and board of directors, Garfield Hospital, was offered in evidence. Defendants objected on the ground that said letter was incompetent, irrelevant, and immaterial, and hearsay, as no conspiracy had been proven, and urged the further objection that Gov. Ex. 475 was clearly inadmissible because passing from one hospital to another, rendering it immaterial. The objection was overruled and exception noted.

(Gov. Ex. 475 was received in evidence.)

Gov. Ex. 476 was offered in evidence to show knowledge on the part of the medical society against all co-conspirators. A copy of this letter was received in evidence attached to a letter from Conklin to Hooe. Defendants objected to the same on the ground that it was incompetent, irrelevant,

and immaterial, and hearsay, as no conspiracy had been proven. The objection was overruled and exception noted.

(Gov. Ex. 476 was received in evidence.)

Gov. Ex. 76 is signed with Major Blair's signature by me under his direction. Gov. Ex. 477 is a list of the courtesy staff of Emergency Hospital in 1937 and 1938.

(Gov. Ex. 477 was received in evidence.)

Dr. William B. Marbury is on the staff of Emergency but I cannot identify the signature on Gov. Ex. 295-A as his. Gov. Ex. 478 was received with the enclosure by me. Gov. Ex. 479 went to the files of Emergency Hospital, didn't come directly to me; I had it taken out of the files in response to a subpoena. Gov. Ex. 480 is a true copy of the annual report of Emergency Hospital for the year ending December 31, 1938.

Gov. Ex. 478, 479, and part of 480 were offered in evidence. Defendants objected to Gov. Ex. 480 as incompetent, immaterial, irrelevant, and hearsay as no conspiracy had been proven. Objection overruled and exception noted.

(Gov. Ex. 478, 479 and pp. 6, 7, 8, 30 and 31 of Gov. Ex. 480 were received in evidence.)

Gov. Ex. 473, a copy of a letter on the letterhead of Central Dispensary and Emergency Hospital from B. B. Sandidge, Superintendent of Emergency Hospital to Dr. Allen E. Lee, dated November 1, 1937, was read to jury as follows:

"Dear Dr. Lee:

Your name has been withdrawn from the list of those to whom the Courtesy Privileges of treating patients at Emergency Hospital is extended, due to the fact that we are advised you are not a member of the Medical Society of the District of Columbia."

Gov. Ex. 474, a carbon copy of a letter dated November 10, 1937, from B. B. Sandidge to Dr. Allen E. Lee, was read to jury as follows:

"Dear Dr. Lee:

On November 1st, 1937, we wrote you to the effect that your name had been withdrawn from the list of those to

whom the courtesy privilege of treating patients at Emergency Hospital is extended, due to the fact that you were no longer a member of the Medical Society of the District of Columbia.

We have since learned that this information was not correct and that your name is still on the membership roster of the District Medical Society, and I am writing to apologize for this error on our part.

As you are aware, one of the requirements at our Institution for a doctor to be extended the privilege of treating patients at this hospital is that he be a member of the District Medical Society, and in view of the fact that your status is still such, and until we are officially notified to the contrary, you are extended courtesy privileges as was your status heretofore.

I wish to assure you that no personal element entered into this action, and again apologizing for this misunderstanding, we beg to remain,

Very truly yours,'"

Cross-examination.

By Mr. Leahy:

I am still superintendent of Emergency and have been superintendent since 1920. I am responsible for the general management of the hospital. Major Blair was president of the board of directors of Emergency. He was a lawyer and is now deceased. Dr. James Mitchell, a surgeon, is general chief of staff.

The other members of the executive committee present at the time were physicians and specialists. There were 11 members on the executive staff. At the meeting there was a great deal of discussion of the fact that other hospitals were granting privileges to Dr. Selders while Emergency had not. On February 18, 1938, there was a rule in force at Emergency that only members of the District Medical Society could be on the staff of that hospital, and that rule had been in force since April, 1936, a long time prior to Group Health. Major Blair wrote Gov. Ex. 475 about Dr. Selders being permitted to take Miss Abbott into Garfield Hospital when he couldn't take her into Emergency. The transfer of Miss Abbott to Garfield for treatment after leaving Emergency was the reason for the discussion in the minutes. The statement in the minutes that the board at

Emergency expressed its appreciation for Major Blair's support of their courtesy staff refers to the fact that Major Blair supported the rules and regulations which had been in effect since April, 1936, that only members of the hospital staff could practice in the hospital. That rule didn't refer to emergency cases because as is stated on page 6 of Gov. Ex. 480: "No patient is ever turned away from Emergency Hospital without treatment and advice." Gov. Ex. 473 was written because of the rule that had been in force since April, 1936, and that is the only reason it was written, as there was nothing personally against Dr. Lee, to my knowledge. The letter wasn't written to Dr. Lee because he was connected with Group Health in any way, and whether he was or was not connected with Group Health didn't bring forth that letter. I wrote it because we thought he had not been extended courtesy privileges, that he was not a member of the District Medical Society. When I found we were mistaken and he was a member of the District Society, Gov. Ex. 474 was sent. Gov. Ex. 478 and 479 came over my desk. Gov. Ex. 480 is a report to the board of trustees.

Gov. Ex. 480 was read to the jury as follows:

"Annual Report of the Superintendent

In this period of changes, new systems being adopted and the general rapid pace of experimentation, in plans for the health needs and hospitalization of our people who are in need of same, it would seem appropriate at this time to take a few minutes for retrospection.

The great need in our city, for an institution of the character of the Central Dispensary and Emergency Hospital, was manifested as far back as the year 1871, for at that time the majority of supposed-to-be trivial accidents were taken to the police stations where the police surgeon was summoned. In case he could not be located, a doctor was sent for. Much unnecessary suffering was caused by this, and the consequences of neglect (often unavoidable), were sometimes disastrous.

Public spirited citizens quickly recognized this inadequate condition of caring for the unfortunate, and this need resulted in the establishment of the present Emergency Hospital. The Charter of Incorporation (1882), reads as follows:

That the particular object of the Association or Society is to provide a suitable building in the city of Washington, D. C., for a dispensary where all needy persons without distinction may be provided gratuitously with medical and surgical service and treatment and with medicine.

In the following paragraphs I will endeavor to describe briefly how well the hospital has kept faith with the public throughout these many years.

For the first year's operation $150 was subscribed, and this, together with $278 appropriated by the Legislature of the District, was the sum total for the treatment of 511 patients.

For the year 1938, there was a money turn-over in the amount of $568,638.75. The greater part of this money was spent in the city of Washington, and employment was furnished to a daily average of some 344 persons on the hospital payroll, in addition to more than 100 special nurses daily engaged by the patients and other personnel in departments financed independently of the hospital proper.

Therefore, as it stands today, from the standpoint of a financial enterprise alone, Emergency Hospital takes its place as one of the important business organizations of our city.

The number of Hospital Days furnished patients for the year was	85,109
The number of Dispensary Visits furnished patients for the year was	25,110
The number of Emergency Room Visits furnished patients for the year was	14,569
The number of Ambulance Trips furnished patients for the year was	3,313

No patient is ever turned away from Emergency Hospital without treatment and advice. If the nature of the patient's illness is a type as to make it dangerous for those patients already hospitalized, such first aid as is needed is given, and arrangements made for proper transfer.

In living up to its charter and meeting the many demands for charity and part-charity during the year that this report covers, the hospital had to donate more than $75,000 from its own resources, with a consequent deficit for the year of $22,940.34, despite the most careful and economical management consistent with the high type of service which has been characteristic throughout its career.

The hospital management is indeed grateful for the patronage of those patients who paid more than the cost of care, for this addition to cost was a direct contribution to public charity (the hospital being organized Not For Profit). However, this type of patient was not sufficient in number at prevailing rates established in the hospital to carry all of this additional load, and philanthropic support was not as generous as in some former years. Nevertheless, the hospital authorities have followed the practice that if the hospital continues to maintain a deep regard for the health of the community as a whole, pay and free alike, the public as well as the Government will appreciate this humanitarian and necessary foresight, and will respond in due course to its financial needs.

Aside from this great humanitarian work, which the hospital is doing, the great numbers of fine and splendidly trained young doctors and nurses who receive all or a part of their professional training here should not be overlooked. It is really inspiring to have them return, from all sections of the country, to pay a visit and speak in grateful appreciation of the excellent training they received here.

Notwithstanding this great volume of work carried on year after year, the hospital has kept pace with modern methods and equipment. The physical plant has not been allowed to depreciate, new additions have been added. Modern equipment has been installed, such as air-conditioning units, devices for more direct communication, and many such improvements for the comfort of and service to patients and doctors."

Then follow some additions to the equipment, some of the more important highlights of 1938, such as the establishment of a blood transfusion fund, the purchase of a Bell fracture table, laboratories, and so forth, and then it says (reading further):

"The Ladies Auxiliary Board, as usual, has been active throughout the year, and we are indebted to this Board of fine women for their deep interest in the hospital and the splendid assistance they render. Their secretary's report is submitted separately, as well as reports from the various department heads."

Then "I record here with sorrow and a feeling of great loss the passing during the year" of certain people inter-

ested and closely identified with the hospital, and he signs it as his 19th Annual Report.

Pages 30 and 31 give the hospital staff, as Superintendent, Mr. B. B. Sandidge, and then there are an assistant superintendent, a night assistant superintendent, an auditor, and a secretary to the Superintendent. Then there is an Interne Committee, residents and assistant residents, internes, nursing staff, hospital staff, all named under their respective committees.

With respect to the contents of the report, in so far as it shows detail, such as the number of people on the pay roll, the number of nurses, those persons were necessary attendants required in operating and maintaining the hospital for the care of the sick, and any expenses incurred in the maintenance of the hospital are incurred for the maintenance and operation of a nonprofit institution for the care of the sick.

It was thereupon stipulated between counsel that the statement of the Court was correct, concerning Emergency Hospital as follows:

"It appears quite clearly that the institution is a nonprofit institution. It carries on its business along that line and all of its funds are directed to that particular purpose."

The rule at Emergency is that the courtesy staff is checked each year and automatically kept up-to-date, and each year each member of the courtesy list is notified that privileges for the ensuing year are extended. There is nothing unusual in checking the courtesy list; just to bring it up to date, to go over it, and see that it is in correct order.

Redirect examination:

I can't testify that there were no exceptions to the rule that every physician who had courtesy privileges in 1937 was a member of the District Medical Society. In June, 1938, the staff found it expedient to make a recheck to further enforce the rule and regulation adopted in April, 1936. When the courtesy staff file was originally made up, the ruling that they had to be members of the District Medical Society was not in force, and, naturally, there were some men, who were not members, who were not automatically dropped; some of them, I feel quite sure, were carried on. I mean by that that the courtesy list was not

brought right up to date so that it would coincide with membership of the District Medical Society, and as of June 1, 1938, when we checked, there may have been some exceptions.

Gov. Ex. 472 (Minutes of June 1, 1938) was read from to the jury as follows:

"A special meeting of the Executive Staff was held in Emergency Hospital. The recommendations of the courtesy committee in regard to approval or disapproval of applications for the courtesy staff were approved by the staff. It was directed that the courtesy committee carefully check the list of the doctors who had been given courtesy privileges in Emergency and who are not members of the Medical Society or their local medical societies in the case of physicians who are non-residents of the District, and that these members be notified that they must join the Medical Society, or the hospital will be obliged to revoke their privileges."

Gov. Ex. 446-A, carbon copy of letter, Dr. Fishback to "Dear John"—identified as Dr. John Lyons—on letterhead of Washington Academy of Surgery, dated December 9, 1937, was read to the jury as follows:

"DEAR JOHN:

I have transmitted your report to George Washington University Hospital. • • •

I am anxious to talk to you before you reach any decision on Dr. Selders, especially if there is feeling that he will be disapproved purely because of his connection here in Washington. As a matter of policy and tact, and I believe for the good of general public attitude toward the profession, the question of his relationship to the Group Health Association, Inc., should not be permitted to enter the discussion."

Gov. Ex. 444-A, minutes of the meeting of the Washington Academy of Surgery of December 10, 1937, was read from to the jury as follows:

"Discussion concerning the Group Health Association ensued. It was suggested that the professional qualifications of the surgeon of that organization alone be considered, as a matter of public policy. However a motion

of Dr. Sager's was passed requesting the Hospital Privilege Committee to consider the ethics of any applicant as well as his strictly surgical training and experience. Ethics were understood to be as defined by the American Medical Association. It was emphasized that investigation should include knowledge of an applicant's earlier behavior in other communities before coming to this locality."

Gov. Ex. 445-A, letter from secretary of Washington Academy of Surgery to superintendent of George Washington Hospital, December 8, 1937, was read to the jury as follows:

"SIR:

The Committee on Hospital Privileges recommends:

1. Approval of Dr. Howard H. Strine for general surgery.

2. Approval of Dr. Carolyn S. Pincock for Minor Surgery.

3. Disapproval of Dr. Allen E. Lee to do general surgery.

4. Disapproval of Dr. Paul Banet to do surgery.

5. Application of Dr. Ross Taggart is for privileges in normal obstetrics and therefore is returned without action.

6. The Committee is attempting to obtain further information on Dr. Raymond E. Selders, and is not yet able to act on his application.

Very sincerely yours, F. C. Fishback, Secretary, Washington Academy of Surgery."

Gov. Ex. 447-A, carbon copy of letter from Secretary, Washington Academy of Surgery, to Colonel P. M. Ashburn, Columbia Hospital for Women, dated January 31, 1938, was read to the jury as follows:

"DEAR COLONEL ASHBURN:

I have today been informed by the Committee on Hospital Privilege that they recommend the disapproval of the application of Dr. Raymond Selders to do general surgery.

Very sincerely yours, F. C. Fishback, Secretary, Washington Academy of Surgery."

From Gov. Ex. 448-A, 449-A, and 450-A, letters from the secretary, Washington Academy of Surgery, to Provi-

dence, Georgetown University, and Garfield Memorial Hospitals, all dated January 31, 1938, the following quotation was read to the jury:

"The committee recommends disapproval of the application of Dr. Selders."

FRANCIS J. EISEMAN, a Witness for the United States.

Direct examination.

By Mr. Lewin:

I am superintendent of Garfield Hospital and was such in 1937 and 1938. Gov. Ex. 481 is a correct roster of the staff of Garfield for 1937. Gov. Ex. 482 lists certain committees of Garfield Hospital and bears my signature; these lists are correct. Gov. Ex. 483 is a copy of a letter which I sent to Dr. Selders dated November 15, 1937. Dr. McGovern was secretary of the Advisory Committee of the staff at Garfield in January 1938. Gov. Ex. 484 bears Dr. McGovern's signature. Gov. Ex. 485 bears my signature. At the time I wrote Gov. Ex. 485, Dr. Harry Kerr, Dr. F. X. McGovern, Dr. Strine, and Dr. Charles Stanley White were on the Surgical Service of Garfield Hospital. Gov. Ex. 486 appears to be the correct minutes of the meeting of the Advisory Committee of the medical staff of December 6, 1937. It was customary for the committee to keep minutes; they were kept by the secretary, and Dr. McGovern's name is at the end of the minutes, as secretary. Gov. Ex. 487 is a correct carbon copy of a report which I sent to President Aspinwall of Garfield. Gov. Ex. 488 is a report which I received from Dr. T. J. Dugan, and bears his signature. Gov. Ex. 489 bears Dr. Dugan's signature.

Cross-examination.

By Mr. Leahy:

There is no signature on Gov. Ex. 486.

FLORA HITCH, a witness for the United States.

Direct examination.

By Mr. Kelleher:

I am employed by Dr. William B. Marbury as a nurse-secretary; Gov. Ex. 295-A bears Dr. Marbury's signature.

Cross-examination.

By Mr. Leahy:

The only writing on Gov. Ex. 295-A of Dr. Marbury's is the signature.

Gov. Ex. 295-A was offered in evidence. The defendants objected on the ground that said writing was incompetent, irrelevant, and immaterial, and hearsay, as no conspiracy had been proven. The objection was overruled and exception noted.

Gov. Ex. 295-A was received in evidence and read to the jury as follows:

"1. What communication has your hospital had from Group Health Association, Inc.?

"There has been some communication, the exact nature of which is not known.

"2. What reply has your hospital made to Group Health Association, Inc.?

"In effect that patients would be accepted, but could only be treated by doctors on staff, and courtesy lists.

"3. Which, if any, of the following Doctors are now members of your Medical Staff in any capacity or have privileges to practice in your hospital?"

A checkmark opposite the name of Dr. Allen E. Lee.

"4. Is your hospital in sympathy with the policies of the Medical Soc. of D. C.?

"Yes.

"5. Is the entire Medical Staff of your hospital reappointed annually?

"Yes.

"6. Are appointments to The Medical Staff of your hospital approved by The Medical Staff?

"Yes.

"7. What governing body of your hospital finally makes appointments to the Medical Staff?

"The Executive Staff.

"8. Does your hospital require membership in the Medical Society of D. C. as a qualification for appointments to its Medical Staff?

"Yes.

"9. What percentage of the entire Medical Staff of your hospital are members of the Medical Society of D. C.?

"Supposedly 100 per cent. Not checked.

"10. Does your hospital require membership in the A. M. A. as a qualification for appointment to its Medical Staff?

"Yes.

"11. What percentage of the entire medical staff of your hospital are members of the A. M. A.?

"Supposedly 100 per cent. Not checked.

"12. Is your hospital a beneficiary of Community Chest funds?

"Yes.

"13. Will you kindly make any other inquiry that you think might be pertinent at this time?

"William B. Marbury."

The Court: What hospital is that?

Mr. Kelleher: That is Emergency, your Honor.

CAROLINE REECE EPPERLEY, a witness for the United States.

Direct Examination.

By Mr. Allen:

From January 1, 1937, to December 20, 1938, I was executive assistant to the president, Louis H. Taylor, at Sibley Hospital. I wrote Gov. Ex. 490 and it bears Dr. Taylor's signature. To the best of my knowledge I wrote Gov. Ex. 491 at the direction of Dr. Taylor. Gov. Ex. 492 are true and correct copies of the roster of the medical staffs of

Sibley Hospital. I typed Gov. Ex. 493 and it bears Dr. Taylor's signature.

Cross-examination.

By Mr. Leahy:

I am now working at Sibley as secretary to the president, Dr. Orem. Dr. Taylor is dead. Gov. Ex. 492 covers the years 1937 and 1938.

Gov. Ex. 490, 491, 492, and 493, together with Gov. Ex. 494 and 495, obtained under subpoena from Sibley Hospital, were offered in evidence. Defendants objected on the ground that the said documents were incompetent, irrelevant, and immaterial, and hearsay, as no conspiracy had been proven. The objection was overruled and exception noted.

(Gov. Ex. 490, 491, 492, 493, 494, and 495 were received in evidence.)

BEULAH C. MUMFORD, a witness for the United States.

Direct Examination.

By Mr. Allen:

From January 1, 1937, to December 30, 1938, I was admitting nurse at Sibley Hospital. As admitting nurse I made all reservations for incoming patients from doctors as they called in, assigned the rooms, scheduled operations, wrote pre-operative orders and admitted patients. Dr. Taylor was president of Sibley at that time. As part of my duties, if some physician called up who didn't have privileges, it was my duty to determine whether to admit him from instructions previously had from Dr. Taylor.

Gov. Ex. 496 is a little memorandum for our own personal use which I wrote, and which we kept as a reminder. I came to write it as so many people were relieving in our office and we were told verbally that these people whose names were on it should not have reservations if calling, so that anyone relieving would be able to find the memorandum, as it is hard to carry everything in your head. The

memorandum was made under instructions of no one. It was a personal memorandum. The president of the hospital told me not to let these people in.

Cross-examination.

By Mr. Leahy:

Gov. Ex. 496 is in my handwriting, except the signatures. The memorandum was kept in our office and the persons signing had been asked to read and sign it. I wrote Gov. Ex. 496 as my own personal memorandum, and the language is my language. I don't recall the date I wrote it.

Redirect Examination.

The persons relieving were staff members who did similar work as I did, relieving in the admission office at times.

Gov. Ex. 496 was offered in evidence. In addition to the general objections that the paper was incompetent, irrelevant, and immaterial, and hearsay, as no conspiracy had been proven, particularly one involving Sibley Hospital, the defendants stated that this memorandum was inadmissible as made by an employee in her own handwriting and for her own personal convenience, and it was nothing more than her own personal memorandum, particularly in view of the fact that Dr. Taylor is deceased, and as there was no evidence that the memorandum was written in the course of her duties as an agent of the hospital. The objections were overruled, exception noted.

(Gov. Ex. 496 was admitted in evidence.)

Gov. Ex. 481, 482, 483, 484, 485, 486, 487, 498, 499, and 500 were offered in evidence. The defendants objected to these documents on the grounds they were incompetent, irrelevant, and immaterial, and hearsay, as no conspiracy had been proven. Further, that the Gov. Ex. 499 was not properly proven, that Gov. Ex. 481 was evidence submitted to the Grand Jury and was privileged, and to permit its use would be to violate the secrecy of Grand Jury proceedings. These objections were overruled and exception noted.

(Gov. Ex. 481 was received in evidence.)

Gov. Ex. 482 was received in evidence, and read from to jury as follows:

"Exhibit 482—Garfield Hospital—names of members of advisory committee of medical staff as of January 1, 1936:

Dr. H. C. Macatee, Chairman, Dr. J. W. Lindsay, Secretary, Dr. B. P. Weems, Dr. J. H. Kerr, Dr. F. J. Eisenman, Superintendent."

Advisory Committee of the medical staff as of January 1, 1938:

"Dr. H. C. Macatee, Chairman, Dr. F. X. McGovern, Secretary, Dr. A. B. Bennett, Dr. T. E. Neill, Dr. L. C. Baker, Dr. R. L. Silvester, Dr. F. J. Eisenman, Superintendent.

In October, 1938, Dr. R. L. Silvester was elected as Secretary of the Advisory Committee in place of Dr. McGovern."

Gov. Ex. 483, carbon copy of letter dated November 15, 1937, from Francis J. Eisenman to Dr. Raymond E. Selders, was received in evidence and read to the jury as follows:

"My dear Mr. Selders:

Acknowledge receipt of a request for Surgical Privileges at Garfield Memorial Hospital. Your application has been referred to the Advisory Committee for action at their next meeting.

You, no doubt, are cognizant with the routine procedure for courtesy privileges in all Class A hospitals. We have required for the past twelve years or more that all such requests be referred to the Medical Advisory Committee of the Board of Directors for recommendation.

This Committee is expected to meet on or about November 29, 1937.

"Sincerely yours,"

Gov. Ex. 500 was received in evidence and described as the letter sent by Dr. Conklin to Garfield Hospital enclosing the approved list of the Medical Society.

Gov. Ex. 498, letter from Dr. Conklin to the chief of staff, Garfield Hospital, dated December 2, 1937, was received in evidence and read to the jury as follows:

"Dear Doctor:

Pursuant to formal action of the Medical Society of the District of Columbia, in session on the evening of December 1, 1937, the attached resolution is sent to you.

Very truly yours, C. B. Conklin, M. D., Secretary."

* * * * * * * *

"The Medical Society of the District of Columbia, 1718 M Street, Washington.

Resolution adopted by the Society, in session on the evening of December 1, 1937.

RESOLVED, That as a matter of educational policy the Medical Society of the District of Columbia strongly recommends that all hospitals engaged in the teaching and training of residents, interns, and nurses, where possible, follow the recommendation of the American Medical Association regarding the constitution of their entire Medical Staffs, namely, that each appointee be a member of the Medical Society of the District of Columbia or a local medical society in this immedate neighborhood and a member of the American Medical Association."

Gov. Ex. 486, minutes of the Advisory Committe, Medical Staff, Garfield Hospital, December 6, 1937, with the typewritten signature of the secretary, F. X. McGovern, M. D., was read from to the jury as follows:

"The Secretary was requested to reply to the Medical Society of the District of Columbia in regard to a Resolution passed by the Medical Society on December 1, 1937."

Gov. Ex. 484, letter from Dr. McGovern to Dr. Conklin, was received in evidence and read to the jury as follows:

"DEAR DOCTOR CONKLIN:

In reply to your letter of December 2, 1937, enclosing the resolution of the Medical Society adopted December 1, 1937, I have been requested to advise you that the present policy in force at Garfield Hospital is in conformity with the provisions of the above-mentioned resolution.

Respectfully yours, F. X. McGovern, Secretary, Advisory Committee."

Gov. Ex. 485, memorandum from superintendent, Garfield Hospital, to Surgical Service, Garfield Hospital, dated December 3, 1937, was received in evidence and read to the jury as follows:

"GENTLEMEN:

Refer for your consideration the application of Dr. Raymond E. Selders for Surgical Privileges. This is not a 'Run of Mine' case, and your action may be far-reaching.

Information shows him to have sufficient training for personal recognition, when compared with many now approved for courtesy privileges at Garfield Memorial Hospital. He is a member in good standing in A. M. A., County and State Medical Societies in Texas, and was returning from Massachusetts to Texas when offered the position with H. O. L. C.

Should your recommendation be adverse, for other than personal qualifications, request they be stated, in order that the Board of Directors might have the benefit of your advice and counsel.

Three Applications sent the Academy of Surgeons, (two of which were returned the second time) on September 24, 1937. They approved of Dr. deBayle, made no comment on Dr. Garbo, and did not even return the papers on Dr. Taggert, both of whom are practicing here, awaiting action on their application.

Application of Dr. Wm. Hollister for Jr. Associate in Surgery. No vacancy.

Yours very truly,"

Gov. Ex. 499, letter from Dr. McGovern, Secretary, Advisory Committee, Medical Staff, Garfield Memorial Hospital, to Mr. C. A. Aspinwall, President, Board of Directors, Garfield Memorial Hospital, dated December 17, 1937, was read to the jury as follows:

"My Dear Mr. Aspinwall:

The following is recommendation of the Advisory Committee of the Medical Staff to the Board of Directors of Garfield Memorial Hospital:

'That pending the settlement of the question raised as to the ethical status of Group Health Association, Inc., and pending further study of the professional qualifications of Dr. Raymond E. Selders, that he be not granted Courtesy Privileges at Garfield Memorial Hospital, except of course in a real emergency.'

The reason prompting this recommendation is the fact that Group Health Association, Inc., a lay corporation, is considered unethical by the Medical Society of the District of Columbia, and its legality is being questioned. Dr. Selders has been hired by Group Health Association as its surgeon. It is the opinion of the Advisory Committee that if Garfield Hospital allows Dr. Selders courtesy privileges

that it would be placed in the light of aiding and abetting Group Health Association, Inc.

Yours very truly, F. X. McGovern, M. D., Secretary, Advisory Committee Medical Staff."

Gov. Ex. 487, report from superintendent, Garfield Hospital, to Mr. C. A. Aspinwall, March 28, 1938, was received in evidence and read to the jury as follows:

"My Dear Mr. Aspinwall:

I went over the Minutes of the Executive Committee and Board of Directors for the past nine months and find the following:

In February 10 Executive Committee meeting a letter from Mr. Kirkpatrick re Dr. Selders privileges was read. No action.

• • • • • • •

December 28, 1937, Executive Committee. The Committee considered the Resolution of the Medical Staff on application of Dr. Selders as follows:

'That pending the settlement of the question as to the ethical status of Group Health Association, Inc., and pending further study of the professional qualifications of Dr. Raymond E. Selders, that he be not granted Courtesy Privileges at Garfield Memorial Hospital, except, of course, in a real emergency.'

Discussed, accepted and referred to the Board of Directors, recommending approval.

• • • • • • •

Meeting of the Board of Directors of March 22, 1938, the President in reviewing the proceedings stated our official connection with Group Health Association was the application of Dr. Selders for surgical privileges, the temporary privileges extended him awaiting action on the application, and the withdrawal of these privileges on recommendation of the Medical Staff, (As noted in Resolution Executive Committee meeting of Dec. 28, 1937), awaiting legality of Group Health Association. The actual disqualification of Dr. Selders' application was by the Board of Directors at meeting on January 25, 1938, in which the Minutes of the Executive Committee meeting of December 28, 1937, were read.

'In approving these Minutes, the Board desired to state that in denying the privileges of the Courtesy Staff of the Hospital to Dr. Raymond E. Selders on the recommendation of the Medical Staff of the Hospital, the action was pending the legality of the Organization who employed Dr. Selders.'

* * * * * * * *

Yours very truly, F. J. Eiseman, M. D., Superintendent."

CLAUDE C. CAYLOR, a witness for the United States.

Direct examination.

By Mr. Allen:

I am now and in 1937 and 1938 was in business for myself. In 1937 and 1938 I was secretary of Providence Hospital. Gov. Ex. 501 I typed and signed, and it bears my handwriting. As part of my duties I attended meetings of the executive committee. Minutes of such meetings were kept in the regular course of business. I kept the minutes as part of my duties. Gov. Ex. 502 are the minutes of the meeting of November 18, 1937.

Gov. Ex. 503 bears my signature. Gov. Ex. 504 appears to be a true copy of the roster of the regular staff at Providence Hospital for 1938. I am unable to identify Gov. Ex. 505. Sister Rosa is in charge of the administrative staff. I have never seen Gov. Ex. 298 and 299 before.

Gov. Exs. 501, 502, 503, and 504, together with Gov. Ex. 506, were offered in evidence. Defendants objected to the documents offered on the ground that they were incompetent, irrelevant, and immaterial, and hearsay, as no conspiracy had been proven. The objections were overruled and exception noted.

Gov. Ex. 501 was received in evidence and read to the jury as follows:

It is on the stationery of the X-Ray Department, Providence Hospital, Washington, D. C. There is a hand-written notation in the righthand corner "Copy of Letter sent by me to non-members of the D. C. Medical Society," signed "C. C. Caylor."

"As a result of the recent inspection of Providence Hospital by the Council on Medical Education and Hospitals of the American Medical Association, we have been reminded that several of our Staff members are not members of the American Medical Association or any of its constituent societies. This is one of the requirements to be met in order to be acceptable for approval for interne training, and at a recent meeting of the Executive Staff it was voted to request all members of the Staff to cooperate in meeting this requirement.

The Staff has instructed me to inquire if you will not cooperate with it in meeting this requirement?

If you are now a member of the American Medical Association or any of its constituent societies, please let me have that information.

Yours very truly,"

Gov. Ex. 502, minutes of the executive staff of Providence Hospital, dated November 18, 1937, was received in evidence and read from to the jury as follows:

"Minutes of the Executive Staff, November 18, 1937.

The meeting was called to order by the President, Dr. Mundell, with Sisters Rosa and Gertrude, and Drs. Fadeley, Putski, Cahill, Duehring, Sanderson, O'Donnell, Moody, Hess, Leibell, Caylor, Higgins and Argy present.

The minutes of the October meeting were read and approved.

The report of the interne committee was approved.

* * * * * * *

Correspondence between the Group Hospital Association and the Hospital was read relative to the admission of beneficiaries of the Association to the hospital, and the care of such patients. It was brought out that such patients would be admitted in accordance with the regulations of the hospital, and that physicians in the employ of the Association should first obtain hospital privileges in the usual manner before they could attend such patients.

The meeting then adjourned.

C. C. Caylor, Sec."

Gov. Ex. 503, letter dated February 17, 1938, from Dr. Caylor to Dr. Selders, was received in evidence and read to the jury as follows:

"DEAR DR. SELDERS:

I regret to inform you that your application for privileges to practice in Providence Hospital has been disapproved by the Staff.

Yours truly, Claude C. Caylor, M. D., Secretary."

Gov. Ex. 504 was received in evidence and described as the "Regular staff for 1938" of Providence Hospital.

Gov. Ex. 506 was received in evidence and described as a letter from Dr. Conklin to the Chief of Staff of Providence Hospital dated December 2, 1937, and enclosing December 1 resolution.

The Court then overruled the objection of the defendants to Gov. Exs. 417-430, inclusive, which had previously been offered in evidence, and allowed an exception.

(Gov. Exs. 417-430, inclusive, were received in evidence.)

MARIAN DANIEL GODBOLD, a witness on behalf of the United States.

Direct examination.

By Mr. Lewin:

I was secretary to the superintendent of Columbia Hospital, Col. Frank Ashburn, now deceased, during 1937 and 1938. Gov. Ex. 507 bears Col. Ashburn's signature. Col. Ashburn was also secretary of the board and it was customary for him to keep minutes of the meetings of the executive committee, and he kept minutes. Gov. Ex. 507 are the minutes of the meeting of December 2, 1937. It was customary for Col. Ashburn to keep minutes of the meetings of the board of directors of Columbia Hospital. I typed Gov. Ex. 508, which are the minutes of the meeting of the board of September 21, 1938, and they bear Col. Ashburn's signature. Col. Ashburn was secretary of the medical board, and it was his custom to keep the minutes of that board. Gov. Ex. 509 are the minutes of the medical board of the meeting of April 14, 1938. Gov. Ex. 510 are the minutes of that board of June 9, 1938. Gov. Ex. 511 are the minutes of the medical board of September 19, 1938. Gov. Ex. 512 are the minutes of the medical board of December 9, 1938. Gov.

Exs. 509, 510, 511, and 512 are signed by Col. Ashburn. Gov. Ex. 513 is a copy of the roster of the medical staff, attending and consulting, of Columbia Hospital, for the years 1937 and 1938.

Cross-examination.

By Mr. Leahy:

I typed the minutes of the executive committee meetings, of the board of directors, and one of the minutes of the medical board. The other minutes of the medical board were typed by another clerk, but Col. Ashburn wrote those out himself. I saw them myself. I took stenographic notes of the minutes, made rough copies of them, and had them corrected by Col. Ashburn.

The Court then overruled defendants' objections to Gov. Exs. 451, 452, 453, 455, 456, and 457, which had previously been offered in evidence and allowed an exception.

(Gov. Exs. 451, 452, 453, 455, 456, and 457 were received in evidence.)

Gov. Exs. 507, 508, 509, 510, 511, 512, 513, 514, and 515 were offered in evidence. Defendants objected on the grounds that the documents were incompetent, irrelevant, and immaterial, and hearsay, as no conspiracy had been proven. The objection was overruled and exception noted.

(Gov. Exs. 507, 508, 509, 510, 511, 512, 513, 514, and 515 were received in evidence.)

Dr. Fred O. Coe, a witness for the United States.

Direct examination.

By Mr. Timberlake:

I am a member of the executive staff of Georgetown Hospital and was such during 1937 and 1938. I am familiar with the minutes of the meetings of the executive committee and with Dr. Dardinski's signature. Dr. Dardinski's signature appears on Gov. Ex. 516, the minutes of a meeting of the executive committee of January 20, 1938. It was the regular practice of the hospital to have minutes taken

of its meetings. Dr. Dardinski was charged with the duty of taking minutes. Gov. Ex. 517 are the minutes of a special meeting of the executive committee of March 10, 1938, and bear Dr. Dardinski's signature. Gov. Ex. 518 are the minutes of a meeting of the executive committee of April 18, 1938, and bear Dr. Dardinski's signature. Gov. Ex. 519 is a roster of the general staff for 1937 and 1938, which I helped prepare. Gov. Ex. 520 is a roster of the executive staff for 1938 and 1939.

Gov. Exs. 515, 516, 517, 518, 519, and 520 were offered in evidence. Defendants objected on the ground that said documents were incompetent, irrelevant, and immaterial, and hearsay, as no conspiracy had been proven. The objection was overruled and exception noted.

(Gov. Exs. 515, 516, 517, 518, 519, and 520 were received in evidence.)

MATTIE M. GIBSON, a witness for the United States.

Direct examination.

By Mr. Allen:

From January 1, 1937, to December 20, 1938, I was superintendent of Children's Hospital. It was the general practice at Children's Hospital to keep minutes of the meetings of the board of directors; of the incorporators and members, and of the medical staff. Gov. Ex. 521 are the minutes of the Board of Directors of Children's Hospital of November 15, 1937, and are signed by Dr. John A. Talbot, secretary. Gov. Ex. 522 are the minutes of the meeting of the incorporators and members of Children's Hospital of September 6, 1937, and bear the signature of Dr. Talbot. Gov. Ex. 523 is signed by Dr. H. A. Ong. Gov. Ex. 524 is a letter or form which doctors not on the staff of the hospital were required to sign, signed by Dr. Scandiffio. Gov. Exs. 525 and 526 are rosters of the staff of Children's Hospital.

Gov. Exs. 521, 522, 523, 524, 525, and 526, as well as Gov. Ex. 527 were offered in evidence. Defendants objected to the documents on the grounds they were incompetent, irrelevant, and immaterial, and hearsay, and objectionable as no conspiracy had been proven. The objection was overruled and exception noted.

(Gov. Exs. 521, 522, 523, 524, 525, 526 and 527 were received in evidence.)

Gov. Exs. 528 and 529 were offered in evidence. Defendants objected to said documents on the grounds that they were incompetent, irrelevant, and immaterial, and hearsay, as no conspiracy had been proven. The objection was overruled and exception noted.

(Gov. Exs. 528 and 529 were received in evidence.)

Gov. Ex. 492 was described to the jury as a list of the medical staff of Sibley Hospital for 1937, but not read. Gov. Ex. 477 was described to the jury as a list of the medical staff of Sibley Hospital for 1938, but not read.

Gov. Ex. 494 was described by Mr. Lewin as a letter from Dr. Conklin, Secretary, District Medical Society, to Sibley Hospital, dated July 29, 1937, "and its enclosure is the White List of approved persons, which omits the name of Group Health Association, Inc."

Mr. Leahy: You might omit calling it the White List. You objected so strenuously to the term "check off".

Mr. Lewin: You want a little tit for tat. All right.

Gov. Ex. 493, letter to the secretary, District Medical Society, dated August 26, 1937, from L. H. Taylor, President of Sibley Hospital, was read to the jury as follows:

"I wish to acknowledge receipt of your communication of July 29, 1937, relative to the action of the Executive Committee of the Medical Society of the District of Columbia on July 12, 1937, in fulfilment of Chapter IX, Article IV, Section 5 of the Constitution.

I have had this communication placed in the appropriate file of the Hospital and its provisions will be carried out by this institution.

Very sincerely yours,"

Gov. Ex. 495 was described to the jury as a letter from Dr. Conklin, Secretary of the District Medical Society, to the Chief of Staff of Sibley Hospital, dated December 2, 1937, enclosing the resolution of the Society of December 1, 1937.

Gov. Ex. 490, letter dated December 6, 1937, from President, Sibley Memorial Hospital, to Dr. Conklin, Secretary, Medical Society, was read to the jury as follows:

"My dear Doctor Conklin:

I wish to acknowledge receipt of your letter of December 2, 1937, referring to the action of the Medical Society on December 1, 1937, and also the inclosed resolution. My impression is that membership in the Medical Council of this institution is already on the basis suggested in the resolution. There are no changes in the Council's personnel in contemplation at present, but should such contingency arise, you will know that proper regard will be paid to the wishes expressed in the aforementioned resolution.

With kind personal regards to you, I am

Very sincerely yours, Lewis H. Taylor, M.D., President."

Gov. Ex. 37 was read from to the jury as follows:

Minutes of the executive committee of the District Medical Society for April 11, 1938.

"The defendant Dr. William Mercer Sprigg presided, and there were present Doctors Borden, Chipman, Claud, Fowler, Holden, Hooe, Gill, McGovern, Murphy, Neill, Reed—John A. Reed and E. Hiram Reede—Lomax Wells, and C. B. Conklin.

At this point Dr. F. X. McGovern asked to be heard. He stated that he had, he believed, the proper interests of the Medical profession at heart. He was of the opinion that frequent press releases would be playing into the hands of the Group Health Association. Furthermore, he had attended a luncheon at which Dr. William C. Woodward and Dr. Wright were present, and that Dr. McGovern's action relative to the press had been commended. It was apparent to Dr. McGovern that the Group Health Association, as such, was licked and that it was a very small affair compared with the much larger, national in scope, movement that was now under way. He did believe that for these reasons certain proposals by Mr. Fulton Lewis, Jr., were made without sufficient knowledge of the full implications. • • •

Dr. McGovern was recognized and said it was plain that the questions that Dr. Hooe had propounded to Mr. Lewis came from Mr. Lewis and that he wanted to make it plain that he believed the Group Health Association was now

nothing but a bubble. He cited what he succeeded in getting in the press personally, ending by saying that since The Post printed an editorial inspired by him (Dr. McGovern) Mr. Kirkpatrick hasn't opened his mouth. He resented strongly his being on trial, which it was very plain that he was.

Dr. Hooe was recognized. He stated that he had not made any plea for Mr. Fulton Lewis' services tonight—just presenting facts. He added that he had another very important matter to bring before the committee—that was relative to the hospitals. He thought that a meeting should be arranged in the Medical Society Building, to which would be invited the official representatives of the various hospitals. He stated that the hospitals had been cooperative. He thought that the Society should get representatives all together, with view to expressing appreciation and standardizing action against the Group Health Association group physicians.

Dr. Hooe would make a motion that the Chairman of the Executive Committee be authorized and directed to appoint a committee, consisting of many members, including such doctors as Drs. A. C. Christie, F. X. McGovern, W. M. Sprigg, Sterling Ruffin and others, to perfect arrangements and conduct the meeting.

The secretary offered an amendment to the effect that the Compensation, Contract and Industrial Medicine Committee, with certain supplementary additions, operate the meeting. Dr. Hooe thought his original plan was to be preferred.

The motion as originally made was seconded and adopted."

Minutes of the meeting of the Medical Society of the District of Columbia, May 11, 1938, were read from to the jury as follows:

"Dr. Thomas E. Neill, president, presiding.

Present: Drs. Vaughan, Prentiss, Trinder, Elward, Fong, Talbot, Reede, Alfaro, Thompson, Gwynn, Rench, Thomas, Barry, Mallory, Leonard, Foye, Arnold, King, Fowler, Christie, Clark, and other members to the number of about 460.

• • • • • • •

The minutes of the preceding meetings held April 27 and May 4 were read and approved. • • •

Dr. R. Arthur Hooe was recognized. He made a motion to the effect that the Medical Society of the District of Columbia go on record as forbidding its members to receive monies or checks for services rendered to beneficiaries of Group Health Association, Inc., from or over the signature of Group Health Association, Inc., or its agencies and so notify the membership of the Medical Society.

• • • • • • •

Dr. Hooe was confident that the Legal Department of the American Medical Association would render an opinion consistent with the motion. He said he had conferred with counsel for the Society and upon request read a communication that had been addressed to the Secretary, as follows:

'May 10, 1938.

'Dr. C. B. Conklin, Secretary, Medical Society, D. C., 1718 M St., N. W., Washington, D. C.

DEAR DR. CONKLIN:

Mr. George P. Hoover tells me that he has received from Dr. Hooe a request for information which it is understood is desired by the Medical Society, namely, as to whether members of the Society should accept payment for services rendered members of Group Health Association.

Mr. Hoover, Mr. Leahy and I have considered the subject and it is our advice that members of the Medical Society should not accept any payments whatsoever from Group Health Association and should issue no receipts in favor of said Association; and that with respect to treatment rendered patients who happen to be members of Group Health Association, the physician who renders the treatment can accept payments made directly by the patients.

Very truly yours, F. A. Fenning.'

Dr. C. B. Conklin made a motion that this matter be referred to the Executive Committee for consideration and report. No second to this motion.

Dr. W. Raymond Thomas made a motion that the matter be laid on the table. Seconded and not adopted.

Dr. Hooe restated his motion to the effect that the Medical Society of the District of Columbia go on record as forbidding its members to receive monies or checks for services rendered to beneficiaries of Group Health Association,

om or over the signature of Group Health Associa-
nc., or its agencies and so notify the membership of
edical Society. Seconded and finally adopted."

. Ex. 417, letter from Dr. Lewis H. Taylor, President,
Hospital, to William C. Kirkpatrick, President,
Health Association, dated February 5, 1938, was
the jury as follows:

EAR MR. KIRKPATRICK:

returning you herewith a check of the Group Health
ation for $66.80 on which there is a notation 'Hospi-
ion for Miss Tommie Lee Nix.' This check was evi-
sent to us by mistake. As you are aware from corres-
nce between your predecessor, Mr. William F. Penni-
and myself, as President of Sibley Memorial Hospi-
e application of Group Health Association to this in-
on for the admission of its members is still under ad-
nt. The Board of Directors of this institution have
d at no conclusion in the matter and pending their
n, of course, none of your Group, as such, are eligible
spital privileges here.

your information, I may state that Miss Tommie Lee
December 24, 1937, was admitted to this Hospital
service of Dr. Rush Conklin. Later, she was trans-
to the service of Dr. A. B. Little, and was then oper-
n by Dr. Oliver Cox. On her admission card, respon-
for her bill is assumed by and over the signature of
R. Nix, 2900 Seventeenth Street, N. E., and we look
gentleman or the patient, Miss Tommie Lee Nix, for
tlement of her account.

Very sincerely yours, Lewis H. Taylor, M. D., Presi-
dent."

Ex. 491, memorandum to admission office, account-
artment, from Lewis H. Taylor, President, Sibley
al, dated February 8, 1938, was read to the jury as
:

ase use every precaution to see that no patient is ad-
as a member of the Group Health Association, Inc.,
Home Owners' Loan Corporation. Also, that all
in payment of service rendered patients be scru-
closely to see that they are not made out by this or-
ion. The reason for this memorandum is that Group

Health Association, Inc. has applied for the privilege of having their members admitted to this Hospital and that their application is still pending and has not been acted on by the Local Board of Directors."

Gov. Ex. 496, handwriting memorandum, was read to the jury as follows:

"Group Health Association, H. O. L. C.
Dr. Henry Brown, Director,
Dr. Raymond Selders, Surgeon
Dr. Allen Lee
Dr. Edmund Wells
Dr. Stephen Hulburt
Dr. M. Scandiffio
These doctors are not to be allowed in at any time.
L. Welch
Beulah Mumford
H. K. Dutton
L. A. Wood
J. Jensey
M. M. Realine."

Gov. Ex. 418, letter, Mr. Kirkpatrick to Dr. Taylor, dated February 18, 1938, was read to the jury as follows:

"My dear Dr. Taylor:

I am in receipt of your letter of February 5, 1938, with which you return a check issued by Group Health Association, Inc., bearing number 247, in the amount of $66.80, to the order of Sibley Memorial Hospital. This check is in payment of a bill dated January 5, 1938, rendered by your hospital for services rendered to Miss Tommie Lee Nix, a member of this Association, while confined in your hospital from December 24 to December 31, 1937.

In your letter you state that the check was evidently sent to you in error and refer to the fact that on the stub of the check there is a notation which reads 'hospitalization for Miss Tommie Lee Nix.' We wish to advise there was no mistake on our part in transmitting the check in question. Under provisions of the by-laws of Group Health Association, Inc., Miss Nix is entitled to have provided to her hospitalization when such is necessary. Miss Nix having received hospitalization in your institution for the dates mentioned is therefore entitled to have the cost of that hospi-

talization paid for by Group Health Association, Inc. Your attention is invited to the fact that the stub which contains the notation referred to is not in any sense a part of the body of the check. The stub is provided only for information of the payee as to what the check is intended to cover. In depositing the check, if you so choose, the stub of course may be detached before the check is deposited. We are, therefore, returning the check herewith and ask that it be deposited in the usual course.

In the first paragraph of your letter you state that application of this Association to admit its members to your hospital is yet under advisement by your Board of Directors and that until a conclusion is reached, members of Group Health Association, Inc., are not entitled to receive the privileges of your hospital. I gather from your letter that because patients may be members of Group Health Association, Inc., they are by that fact not entitled to be treated at Sibley Memorial Hospital until such time as your Board has approved their admission as such members. It is difficult for us to appreciate this conclusion. We understand that hospitals in the District of Columbia are maintained for the service of members of the community and that those comprising the community may enjoy the privileges of treatment at those hospitals when necessary and that membership in Group Health Association, Inc., could hardly be regarded as a reason for denying such persons admission to your hospital when such is necessary. I do not believe that the Methodist Episcopal Church, which we understand is the owner of Sibley Memorial Hospital, would approve such a policy.

We can well understand that admission to your courtesy staff of any member of the staff of physicians of Group Health Association, Inc., is entirely within the discretion of the authorities of your hospital and that you have every right to insist that any physician or surgeon admitted to courtesy privileges in your hospital should first establish beyond all doubt the fact that he is in every respect qualified for admission to the courtesy staff. We can not, however, comprehend that citizens of the District of Columbia when in need of treatment at your hospital should be denied that privilege merely because they are members of this Association.

Very sincerely yours,"

Gov. Ex. 419, reply of Sibley Hospital dated February 21, 1938, was read to the jury as follows:

"My dear Mr. Kirkpatrick:

I wish to acknowledge receipt of your letter of February 18, 1938, addressed to me as President of Sibley Memorial Hospital and returning to me a check, numbered 247, issued by the Group Health Association, Inc., in the amount of $66.80, said check made to the order of Sibley Memorial Hospital and dated January 17, 1938; the purpose of this check as indicated on its stub, 'Hospitalization for Miss Tommie Lee Nix.'

Miss Tommie Lee Nix was admitted to the Hospital on the service of Dr. Rush Conklin on December 24, 1937. Miss Nix signed her own card of admission on which appears the name of her brother, James R. Nix, 2900 17th Street, N. E., who assumed responsibility for the payment of her bill while in this institution. On her admission card appears no reference whatsoever to the Group Health Association, Inc. It should be apparent that pending the decision of the Local Board of Directors of Sibley Memorial Hospital, who are considering the request of your Association, the institution would not receive your members as such. This Hospital is open to citizens of the District of Columbia and the surrounding country and has been since the foundation over forty years ago. The fact that an individual is a member of any organization, yours or otherwise, has nothing to do with entry to Sibley Hospital. I am therefore, returning your check, #247. We confidently expect and know that Miss Nix or her brother who signed responsibility for her bill, will settle this account.

Very sincerely yours, Lewis H. Taylor, M. D., President."

Gov. Ex. 420, letter from R. T. Berry, Secretary-Treasurer, Group Health Association, Inc., to Dr. Lewis H. Taylor, President, Sibley Hospital, dated March 30, 1938, was read to the jury as follows:

"Dear Mr. Taylor:

We have again received our check #247 in the sum of $66.80, drawn to your order for hospitalization incurred by Miss Tommie Lee Nix.

We regret that you seem to be unable to accept payment for an apparent just debt. We wish to inform you that the

expense so incurred by Miss Nix is payable by this association and any delinquency in payment as may appear on your records is due entirely to the fact that this check has not been accepted and we wish you to understand that the credit standing of Miss Nix in the District of Columbia or elsewhere is not to be affected in any way, pending your decision as to whether or not you will definitely decline or accept this check.

When you wish payment, kindly notify this office and we will again forward you the check to clear your records.

Very truly yours,"

Gov. Ex. 421, letter, Lewis H. Taylor, President, Sibley Hospital, to Mr. Kirkpatrick, President, Group Health Association, was read to the jury as follows:

"June 20, 1938.

MY DEAR MR. KIRKPATRICK:

I am returning to you herewith, a check of the Group Health Association, numbered 931, in the amount of $31.00 on which there is a notation 'for board, drugs, and laboratory service, Miss Taylor Owen.'

Miss Taylor Owen was admitted to Sibley Hospital on May 23, 1938, on the service of her physician, Dr. A. McNitt. On her admission record, responsibility for her account was assumed by her sister, Miss Moss Owen.

Similar action was taken in the case of Miss Tommie Lee Nix and the reasons therefor were plainly stated in correspondence between you and myself and may be found in my letters to you.

The Local Board of Directors have arrived at no decision in the matter of the application of Group Health Association for certain privileges in Sibley Memorial Hospital. I will communicate to you promptly any action which they may take in the matter.

Very sincerely yours,"

Gov. Ex. 422, Mr. Kirkpatrick's reply to Dr. Lewis H. Taylor, dated August 5, 1938, was read to the jury as follows:

"DEAR MR. TAYLOR:

This will acknowledge receipt of your letter of June 20, 1938, with which you return our check #931 in the amount

of $31.00 for Board, Drugs and Laboratory Service to Miss Taylor Owen, a member of Group Health Association, Inc. The check in question is returned herewith together with a request signed by Miss Owen that you accept the check as tendered.

Very truly yours,"

"DEAR SIRS:

This is to advise you that Group Health Association, Inc., has been by me requested to make payment to you of the indebtedness due you of $31.00 arising out of your recent services to Miss Taylor Owen.

If, for any reason you do not accept the tendered payment, you will kindly advise Group Health Association, Inc. the basis of your refusal as I expect to leave settlement of this indebtedness entirely with the Association, and have given it full authority to act for me in the premises."

Gov. Ex. 423, reply of President of Sibley Memorial Hospital on August 12, 1938, to above letter, was read to the jury as follows:

"MY DEAR MISS OWEN:

Receipt is acknowledged of your letter of August 5, 1938, enclosing check of Group Health Association No. 931, in the amount of $31, payable to the order of Sibley Memorial Hospital. Said check is returned to you herewith.

It is requested that you pay the amount of your indebtedness to this hospital in cash.

Yours very truly, Lewis H. Taylor, M. D., President."

Gov. Ex. 424, Mr. Kirkpatrick's letter dated August 26, 1938, was read to the jury as follows:

"DEAR MR. TAYLOR:

This will refer to your letter of August 12, 1938, addressed to Miss Taylor Owen, 2019 Eye Street, N. W., Washington, D. C., which letter has been referred to the writer for attention by Miss Owen.

Miss Owen has previously notified you that this Association is acting in her behalf with respect to the hospital bill amounting to $31.00 due you.

You will find enclosed our check #931, which was previously forwarded to you and which was returned with your

letter to Miss Owen, now duly certified by the Riggs National Bank.

If for any reason you do not see fit to accept this certified check, advice as to the basis of your refusing to do so will be appreciated.

You can readily understand the considerable trouble which would be involved in making a formal legal tender in cash to you of the amount in question. I feel certain that your attitude will not be such as to require us to resort to this extremity.

Very truly yours,"

Gov. Ex. 425, reply of Dr. Lewis H. Taylor on August 30, 1938, to above letter, was read to the jury as follows:

"DEAR MISS OWEN:

Receipt is acknowledged of a letter of Group Health Association dated August 26, 1938, with the enclosure being a certified check in the amount of $31.00 therein referred to. Said letter purports to have been sent in your behalf.

The check is returned to you herewith, with the request, as previously made in our letter addressed to you under date of August 12, 1938, that you pay the amount of your indebtedness to this Hospital in cash.

Very truly yours,"

Gov. Ex. 426 was described to the jury as a somewhat similar letter from Dr. Lewis H. Taylor, President of the Sibley Memorial Hospital, to Mr. Howard F. Vickery in regard to refusing payment of Group Health's check for this account dated August 2, 1938, not read to the jury.

Gov. Ex. 427 was described to the jury as a letter of Mr. Kirkpatrick in regard to the Howard Vickery case, enclosing the authorization of Mr. Vickery to the Sibley Hospital to accept check, not read to the jury.

Gov. Ex. 429 was described to the jury as Mr. Kirkpatrick's letter to Sibley Hospital dated August 13, 1938, not read to the jury.

Gov. Ex. 430 was described to the jury as the last word in this series of letters, dated August 30, 1938, from Dr. Taylor to Mr. Howard Vickery, finally refusing a certain check and demanding cash; not read to the jury.

Gov. Ex. 507 was read from to the jury as follows:

"Minutes of meeting of the Executive Committee of Columbia Hospital, dated December 2, 1937:

(b) The Hospital Committee of the Medical Society of the District of Columbia has recommended to the Society that all members of the staffs of all hospitals in the District be asked to join the Medical Society of the District or the American Medical Association, but the District Medical Society has not yet acted upon the recommendation."

* * * * * * *

"The Superintendent reported correspondence with the Group Health Association within the Home Owner's Loan Corporation, indicating, on the part of the Association, a desire to have its members accepted for hospitalization at customary rates, and that Dr. Selders, one of its employees, be allowed to treat such members when hospitalized here. The Superintendent had replied that the hospital would doubtless be willing to accept members of the Association at the customary rates, but that no physician could practice here until appointed to either the regular or courtesy staff by the Board of Directors. Following this, Dr. Selders made application in Classes 1, 2 and 3, which application is now under consideration by a committee appointed within the Medical Board, because the application did not show the special training and large experience in Obstetrics and Gynecology which are usually demanded of applicants for privileges in Classes 1 and 2.

The Superintendent further reported a visit from Mr. Penniman of the Home Owner's Loan Corp., who explained the objective of the cooperative society and expressed a desire to work in the closest harmony with physicians and hospitals, stated that the cooperative society expects to pay but $4.00 per day toward the hospital expenses of its members and that those members must themselves pay any additional charges. He asked that pending action upon Dr. Selders' application for privileges, temporary approval be granted him in case of emergency work or obstetrics. The Superintendent informed Mr. Penniman that privileges would be granted for cases of normal obstetrics pending the decision.

Dr. Sprigg, a representative of the Medical Board, counseled delay in action upon both the requests made by the Group Health Association and Dr. Selders pending legal decision at present being sought in regard to the Association, and that meanwhile emergency cases requiring hospitalization be accepted as a measure of humanity. The Su-

perintendent asked if the Committee had any instructions as to how he should proceed in case of request for admission of patients and was advised, upon motion of Mr. Blair, that action in such cases be left to his judgment. Mr. Lesh then stated that, if it were true, he thought that it should be made a matter of record that the Superintendent's action and the proposals now made meet with the approval of the Medical Staff and, upon assurance by Dr. Sprigg that such is the case, it was decided to make a record of the fact."

Gov. Ex. 508 was read from to the jury as follows:

"Minutes of the meeting of the board of directors of Columbia Hospital of September 21, 1938:

The Medical Board reported as follows on the applications for courtesy privileges:

Dr. Raymond E. Selders, Classes 1 and 3, the Medical Board informs the Board of Directors that it considers it inadvisable to act at this time on the application of Dr. Selders.

• • • The Superintendent reported 'Group Health has asked for the granting of privileges to its doctors. Captain Wells had informed them that action might be taken at this meeting. The action on Dr. Selders' application indicated above is the answer.'"

Gov. Ex. 512 was read from to the jury as follows:

"Minutes of the Medical Board of Columbia Hospital of December 9, 1938:

The following applications for hospital privileges were considered. Dr. Clark P. Halstead, Class 3, postponed pending further information."

Gov. Ex. 511 was read from to the jury as follows:

"Minutes of the Medical Board of Columbia Hospital for September 19, 1938:

Dr. Sprigg moves to consider the application of Dr. Selders for privileges in Classes 1 and 3, and that he not be endorsed for the privileges. This was seconded by Dr. Mundell and discussed by Doctors Sprigg, Wilson, Sylvester, McNitt, Mundell and Copeland, after which, Dr. Wilson

moved that the following be substituted for Dr. Sprigg's motion:

'That the Medical Board inform the Board of Directors that it considers it inadvisable to act at this time on the application of Dr. Selders.'

This was seconded by Dr. Sylvester and was carried by five to two. Dr. Wilson then moved the adoption of his substitute. Dr. Sylvester seconded the motion and it was passed by a vote of five to two."

Gov. Ex. 514 was described to the jury as a letter of Dr. Conklin dated July 29, 1937, to the Superintendent of Columbia Hospital, enclosing the list of organizations approved by the Medical Society, not read to the jury.

Gov. Ex. 515 was described to the jury as a letter from Dr. Conklin to the Chief of Staff of Columbia Hospital, dated December 2, 1937, enclosing the resolution of the Medical Society of December 1, 1937; not read to the jury.

Gov. Ex. 440-A, letter from Sister M. Rodriguez to C. B. Conklin, Secretary, Medical Society of the District of Columbia, dated December 7, 1937, was read to the jury as follows:

"My Dear Dr. Conklin:

I am in receipt of the copy of the Resolution adopted by the Medical Society of the District of Columbia.

It gives me pleasure to state that the Executive Staff of the Georgetown University Hospital, in session on October 11, 1937, acting on the recommendation of the American Medical Association concerning the approval of Residencies and Internships ruled as follows:

That all members to the Courtesy Staff shall be nominated and elected annually and that no physician shall be nominated or elected to any staff of the hospital unless he is a member of his local or County Medical Society and of the American Medical Association. Members who are already on the staffs, as well as those who are applying for privileges to practice in the hospital, shall be notified to qualify within the year.

Thanking you for past courtesies, I am

Sincerely yours, Sister Mary Rodriguez, Superintendent."

Gov. Ex. 516, minutes of the special meeting of the Executive Committee on hospital administration of Georgetown University Hospital held January 20, 1938, was read from to the jury as follows:

"Special Meeting of the Executive Committee on Hospital Administration.

Special Meeting of the Executive Staff was held January 20, 1938, at 4:00 p. m. in the staff room of the hospital, Father McCauley presiding.

Those present were Drs. Coe, Martel, Whitmore, Vaughan, Koppanyi, Mollari, Cavenaugh, Cahill, Zolnitsky, Milone, Mundell, Stanton, Duehring and Dardinski.

Sister Rodriguez presented the case for consideration which concerned a patient admitted from the H. O. L. C. The question to be decided:

1. was the patient now (after 48 hours) to be considered an emergency case.

2. would Dr. Selders be allowed to treat the case in spite of the fact that his credentials had not yet been approved.

Dr. Vaughan felt that the case was no longer an emergency and that Dr. Selders should not be allowed to continue with the case.

Dr. Coe said the case must be taken care of and that he had been in consultation with Dr. Selders on the case and had advised him to have orthopedic consultation.

Dr. Cahill thought we should take action, since we had no report from the Washington Academy of Surgery we should act ourselves. He said Dr. Selders is not qualified and a case is no longer an emergency after 48 hours.

Dr. Martel thought that Mr. Penniman was pressing Sister on a good opportunity. Being an emergency case Sister consulted with Drs. Coe, Martel, Duehring and Dardinski. All agree to admit patient as emergency. Now we must consider is the case still emergency. If patient is moved what would be the consequences. Furthermore Dr. Selders says he doesn't care who treats the patient but patient must pay doctor. They will not.

Dr. Stanton said that Dr. Coe had suggested treatment and Dr. Selders is not taking advice. Best interests of patient to be considered first. Case is no longer an emergency.

Dr. Coe thought that Dr. Selders can do it only with consultation of staff member.

Dr. Martel moved that Dr. Selders be informed case ceases to be an emergency and should cease treating case.

Dr. Vaughan again stated that case was not an emergency. The case now could wait a week. Dr. Selders has no right to handle case and now it becomes hospital case. He should not be allowed to operate but courtesy of being present when man operates should be extended to Dr. Selders.

Dr. Coe described the operation.

Dr. Mundell thought there were many angles to the case and expressed himself in favor of allowing Dr. Selders to go on with the case.

Dr. Koppanyi suggested we defer action until we see what other hospitals do.

Dr. Duehring felt that cases should be treated by Dr. Selders to avoid trouble.

Dr. Vaughan does not agree with Drs. Duehring, Koppanyi and others in favor of allowing Dr. Selders to continue with case.

The original motion of Dr. Martel's withdrawn. Dr. Martel moved that emergency no longer exists.

Passed 5 no, 10 yes.

Sister Rodriguez moved that although permission was given to treat the case now that the case has become operative it must be done under supervision of one of our approved orthopedic surgeons according to the rules of the hospital.

Passed unanimously.

Dr. Cahill moved that surgical privileges be withdrawn from Dr. Damian. Dr. Coe seconded. Passed unanimously.

Motion made to adjourn.

Signed: V. J. Dardinski, M. D., Secretary."

Gov. Ex. 517, minutes of a special meeting of the Executive Committee on hospital administration, held March 10, 1938, Georgetown Hospital, were read to the jury as follows:

"Special Meeting of the Executive Committee on Hospital Administration.

A special meeting of the Executive Staff was held Thursday, March 10th, at 12 noon. Father McCauley presiding.

Those present were Sister Rodriguez, Drs. Hird, Vaughan, Martel, Koppanyi, Cavanaugh, Mollari, Wall,

Milone, Solnitzky, Duehring, Cahill, Coe Mundell, Cutting, and Dardinski.

Subject for consideration was the letter sent out by the Group Health Organization, Inc. inviting members of the hospital staff to attend meeting which was to be held Friday, March 12.

This letter was read by Father McCauley.

Dr. Coe read a motion which after suggestions and amendments by Drs. Hird, Wall and Duehring finally read as follows:

The Executive Staff appointed Dr. Duehring to represent the Georgetown University Hospital in an informal capacity at the Group Health Association meeting with the following instructions, which he is at liberty to use or ignore.

1. The Georgetown University Hospital will grant privileges to practice to any doctor whose qualifications are such as are deemed sufficient by the credentials committee of the hospital to practice his specialty.

2. Any patient who is a member of the Group Health Association applying to the Georgetown University Hospital for treatment of any nature will be admitted to the hospital and cared for by the doctor of his choice if said doctor is a member of the staff, or by a designated member of the staff.

This was seconded and adopted.

Dr. Duehring said he believed the group should be informed that the hospitals of this city are more open than hospitals in the New England States which are closed to all except those on the staff.

Dr. Koppanyi said we should tell them frankly that hospitals cannot be coerced into taking men that were not qualified.

Dr. Martel said that Dr. Scandiffio is qualified. He has done something we do not approve and that probably that is what they would like to have someone say. Dr. Martel felt that we should not send a representative.

Dr. Cahill said we could not ignore the letter. Providence Hospital is sending representative. Thought sending a letter would be better explaining we will be glad to take patients but men must be approved.

Dr. Duehring moved that a representative be sent to speak informally. Seconded by Dr. Mollari.

Dr. Coe thought that speaker might refer to the compensation commission work and suggest that the group health organization, inc. workings might be run along the same lines.

Father McCauley asked Dr. Martel to go as representative but he declined for reasons of his own. Dr. Duehring was asked to go and accepted.

Sister Rodriguez felt that a letter should be taken along with definite statements to be read.

Dr. Vaughan thought that a letter should be taken and used if necessary.

This was finally done.

Moved to adjourn at 12:30 p. m.

Signed: V. J. Dardinski, M. D., Secretary."

R. STEPHEN HULBURT, a witness for the United States.

Direct examination.

By Mr. Kelleher:

I am a general practitioner. I received my medical degree from Georgetown University in 1931. My academic schooling was completed in 1929. I entered private practice in Washington and was clinical instructor in medicine in the out-patient department of Georgetown from 1932 to about 1937. My duties were to take care of medical patients in the dispensary and advise students in their work. I think I had the privilege of bringing my own patients and treating them in Georgetown Hospital, but I didn't apply by formal application, and it was about two years before they requested me to fill out a formal application blank, which I did in 1935. I was notified formally that I had privileges for general medicine, normal obstetrics, and minor surgery.

In 1937 I joined the staff of Group Health as an assistant to Dr. Lee. I was with Group Health at the time their clinic opened. Gretchen Moriarity was one of the members of Group Health whose case I handled early in 1938. I visited her at Georgetown Hospital on April 7, 1938, and she was in labor and I gave her the necessary examination and went back to the clinic.

After she called me, I called the Georgetown University Hospital and believe I talked with the girl in the admitting office.

Q. And whom did you talk to at the Hospital?

A. I asked for the admitting office and talked with the girl in the office.

Q. And did you ask permission to bring Mrs. Moriarity in?

A. I did.

Q. And what did the admitting office say?

Mr. Leahy: I object to that; it is hearsay.

Mr. Lewin: Falls under the same ruling your Honor has made.

Mr. Kelleher: I will also connect it up with the Superintendent.

Q. Did you speak directly with the admitting office: did you ask for the admitting office?

A. I asked for the admitting office, and I believe I was connected with it.

The Court: While you were connected with the hospital you talked on the phone?

The Witness: Yes.

The Court: Overruled.

The Witness: Do you wish me to answer that question?

Mr. Kelleher: Yes.

The Witness: I talked with the girl in the office and told her I was Dr. Hulburt, connected with Group Health, and had this obstetrics case in active labor. I would like to have her admitted as an obstetrics case; she needed hospitalization.

And what did the clerk in the admitting office say?

She said she didn't know whether there was any vacancy, but she would find out, and I think she inquired for Sister James Joseph.

Q. And who was Sister James Joseph?

A. She was the Sister in charge of the office.

Q. What was the conversation you had with her?

Mr. Leahy: The same objection.

The Court: Overruled.

Mr. Leahy: Exception noted.

A. I asked her to admit this patient. I told her I wanted her to admit this patient; that she had a history of having

previous children who were delivered very quickly, and her membranes were already ruptured, and I thought she should be in the hospital where she could be under observation.

Q. And what did Sister Joseph say?

A. She just asked me to wait a minute; she would take it up with Sister Rodriguez.

Q. Did she make any suggestion as to who should handle Mrs. Moriarity in the hospital if she was admitted?

A. I don't recall.

Q. Did she say anything about the patient being treated as a house patient?

A. She may have; I don't recall that especially; she may have said that.

Q. What is a house patient?

A. A patient who comes in and who is under the treatment of the physician in charge of that service in the hospital.

Q. I believe you already testified that she said she would speak to Sister Rodriguez?

A. Yes.

Q. Who is Sister Rodriguez?

A. She was the Superintendent of the Hospital at that time.

Q. Did you wait at the phone while she did that?

A. I did.

Q. And did Sister Joseph return to the phone?

A. Yes.

Q. What did she say at that time?

A. She said, Sister Rodriguez said it would be all right to admit her as an emergency patient; that they would never turn down any case that needed help.

I sent Mrs. Moriarity to the hospital, and I saw her in the first stage room. I went to Georgetown about 1 o'clock, examined her, found she was not having pain, and that the labor was not as fast as I anticipated. I went back to the clinic and at 5 o'clock I received a call to come to Georgetown, but as traffic was heavy I didn't get there until 5:30. When I arrived, the nurses told me that Mrs. Moriarity's baby had been delivered without pain. I examined her, found her all right. The nurse then said that Sister Rodriguez wished to speak to me. Sister Rodriguez told me she was glad to admit the patient as

an emergency case as they would never think of not allowing anyone to come into the hospital that they thought could be helped there, but I should realize that I no longer had privileges there. I replied that I didn't know that; I had not been notified to that effect, but I didn't care to argue or remonstrate, so I told her I was sorry, and went on.

On April 25, 1938, I resigned from Group Health. I made formal application for privileges at Georgetown, which were granted. Gov. Ex. 530 is the letter I received from Georgetown.

Gov. Ex. 530 was offered in evidence. Defendants objected on the grounds that the letter was incompetent, irrelevant, and immaterial, and hearsay, and that no conspiracy had been proven. The objection was overruled and exception noted.

Gov. Ex. 530 was received in evidence and read to the jury as follows:

"May 12, 1938.

MY DEAR DR. HULBURT:

Your application to practice at the Georgetown University has been approved by the Credentials Committee.

You have been granted privileges to practice in branches of medicine checked with the understanding that you become a member of your local medical society within the year."

And there is a check mark next to "Minor Surgery," "Medicine," and "Obstetrics, normal."

"Very sincerely yours, Sister Mary Rodriguez, Superintendent."

I don't recall while I was with Group Health that I applied for privileges at Columbia. I don't believe I had privileges at Columbia Hospital while with Group Health. After resigning from Group Health I obtained privileges at Columbia.

Cross-examination.

By Mr. Leahy:

I don't recall that I ever made application for privileges at Columbia Hospital before I went to Group Health. It is the general procedure in any of the hospitals in Washington to make application for privileges. I don't remember making such an application to Columbia while or before

I went with Group Health. When I did make application I followed the general routine and filed an application for privileges in local hospitals and I received privileges. In 1938 I received privileges, some time after I resigned from Group Health on April 25.

When I went with Group Health I understood it was to be part-time, but before I had been there very long it developed into full-time. The reason being the demand was great and there was just so much work there wasn't any time to do anything else. I did clinical hours from 9 to 1, made the calls from 1 to 3, and from 3 to 6 was in the clinic. My understanding was, which first interested me, that I was going to help Dr. Lee as an assistant in internal medicine. Before I got through I was doing other things because the pressure of work was so great, so varied, I was doing a great many things. I resigned from Group Health in April, 1938, for many reasons that had been going over in my mind for many months before I made my decision. I had gone to Group Health with the idea: I had heard Dr. Lee describe it as going into a new organization which would provide better medical practice, and it would build up to be comparable to the Ross-Loos Clinic in Los Angeles, and, perhaps, even the Mayo Clinic. That I would go in as an assistant and be associated with men of national reputation, and I thought it would be of professional advantage to do that; I went in on that basis. For the first month it worked very well. There weren't so many people coming in. But by the middle of December the volume worked up, had become so great that I was doing work from early morning until late at night—full-time work and over. The reason why I left Group Health was because after my experience with the clinic I found I couldn't do good medical service because of the stress of work laid on me.

Redirect examination.

I came to Group Health to be Dr. Lee's assistant. Dr. Lee resigned in December, 1937. It was before the middle of December that my duties increased. They were increasing every day, even before Dr. Lee resigned. They were substantially increased after he resigned. They were heavy during the period when Dr. Lee resigned and Group Health obtained Dr. Price. The fact that I was excluded from Georgetown University Hospital did not influence me materially in my decision to resign from Group Health but it

did influence my wife. I am a member of the Medical Society now. The summer after I resigned from Group Health I filed my application, and it was acted on in November, 1938.

Gov. Ex. 509 was read from to the jury as follows:

"Minutes of Meeting of April 14, 1938 of the Board of Columbia Hospital (Excerpt)

The application of R. Stephen Hulburt for privileges was tabled."

Gov. Ex. 510 was read from to the jury as follows:

"Minutes of the meeting of June 9, 1938, of the board of Columbia Hospital.

'The following applications for courtesy privileges were considered:

R. Stephen Hulburt was approved.'"

FRANCIS X. RICHARDSON, a witness for the United States.

Direct examination.

By Mr. Lewin:

I am a doctor of medicine, licensed to practice in the District of Columbia. I was licensed in 1938. I was trained at George Washington University Hospital. I interned at Providence Hospital. In 1937 I resided in Takoma Park, Maryland, and was then a member of the American Medical Association's constituent society in Maryland which is the Medical and Chirological Faculty of the State of Maryland.

In December, 1937, I joined the staff of Group Health, when asked by a man by the name of George McDuffy if I was available for outside calls. I went to see Dr. Brown and, as a result, joined the staff for outside calls. I am a general practitioner. I was to receive a salary of $150 per month for outside calls and 4 cents a mile for mileage. This was part-time work. I continued to do this work for Group Health until I resigned on July 15, 1938. Originally I was to do work at Takoma Park, and then I took calls in the District, and my compensation was raised to $200 per month. I had a conversation with Dr. McNulty and Dr.

Jesse Mann in the cloakroom at Sibley Hospital. I have staff privileges at Sibley and had them in 1937 and 1938, and I had privileges at Garfield and Providence Hospitals also. I had this conversation while attending a private patient at Sibley Hospital; I never had any Group Health patients in any hospital.

Gov. Ex. 531 bears my signature.

Gov. Ex. 531 was offered in evidence. Defendants objected on the grounds it was incompetent, irrelevant, and immaterial, and hearsay, as no conspiracy had been shown. The objection was overruled, exception was noted.

Gov. Ex. 531 was received in evidence and read to the jury as follows:

"Dr. R. E. Selders, Medical Director, Group Health Association, Washington, D. C.

DEAR DR. SELDERS:

This is to advise you that upon receiving this letter I shall be no longer available to accept calls for Group Health Association.

Sincerely yours, Francis X. Richardson, M. D."

I wrote and sent this letter, Gov. Ex. 531, after I had this talk in the cloakroom in Sibley Hospital with Drs. Mann and McNulty.

Cross-examination.

By Mr. Leahy:

I started practicing medicine in July, 1934, when I finished my internship at Providence Hospital. I was first employed at the rate of $150 a month at Group Health Association, and later, in February, Group Health increased my compensation to $200 a month. From February on Group Health Association employed me at $200 a month.

WILLIAM C. KIRKPATRICK, a witness for the United States.

Further direct examination.

By Mr. Lewin:

I drew cash and, in one instance, I gave it to my secretary and in another instance I gave it to one of the patients, and

in a third instance I directed and our bookkeeper took it to Sibley Hospital for the final payment of the hospitalization bills of Tommie Lee Nix, Howard Vickery, and Miss Taylor Owen. The money came from the treasury of Group Health. I recall a few instances when Group Health paid members of the District Medical Society for services rendered to Group Health patients. In one instance I paid cash to Dr. J. Ogle Warfield.

In August, 1938, or earlier, I had a conversation with Major Gist Blair, President of Emergency Hospital, for the purpose of having members of our staff admitted to that hospital.

"Question: Tell us what the conversation was."

The question was objected to on the grounds of incompetency, irrelevancy, and immateriality, that no conspiracy had been shown; that it called for hearsay, and that the other party to the conversation was dead. The objection was overruled and exception allowed.

The Witness: We met in the office of Major Blair in the Emergency Hospital. Present at that conference was Major Blair, Mr. Sandidge, the superintendent of the hospital, and Dr. Mitchell, who, as I understood, was chief of the surgical staff. Accompanying me was Mr. Horace Russell, a member of the Board of Directors and General Counsel for the Federal Home Loan Bank Board. We stated the purpose of our visit there, namely to see whether we could enter into an arrangement whereby doctors of Group Health could make application to Emergency Hospital and be admitted to courtesy privileges, provided their qualifications were proper.

We found Major Blair very cooperative. He made the statement that he was in sympathy with what we were trying to do, and he made the statement that he thought there was a place in the medical field for group practice of medicine.

Mr. Sandidge contributed nothing to the meeting. He didn't say a word. Dr. Mitchell said very little more. After some discussion of perhaps 20 minutes or a half an hour, they spoke of getting our staff in there. Major Blair volunteered that he would do what he could among his acquaintances in the other hospitals and among the medical fraternity in the District to see whether or not this question might not be resolved in favor of Group Health to the end

that we be admitted to that hospital, but he offered the information that it was part of the by-laws of that hospital that any physician on the courtesy staff must by reason of that fact be a member of the District Medical Committee, and we told Mr. Blair that none of our doctors at that time were such. He said that he would communicate with us in writing when and if he was successful in obtaining any information that he thought might be helpful or favorable to us, and at the end expressed his interest in this thing and his sympathy with it, and with that the meeting ended.

Q. Were you asking for the admission of any particular doctor on Group Health staff or all the doctors?

A. We didn't name anybody at all. We asked for the staff as a whole. We said "our doctors". That is the way we put it.

Q. That is a pretty full statement of what transpired there?

A. I think that describes the meeting, Mr. Lewin.

Following the interview Mr. Russell wrote a letter to Major Blair (Gov. Ex. 392) and submitted it to me before he sent it. Later Mr. Russell sent me the reply received from Major Blair (Gov. Ex. 532).

Gov. Ex. 392, letter from Mr. Horace Russell to Major Gist Blair, dated February 9, 1938, and Gov. Ex. 532, letter from Mr. Gist Blair to Horace Russell, dated February 10, 1938, were offered in evidence. In addition to the general objection of incompetency, irrelevancy, and immateriality, to these exhibits, Gov. Ex. 532 was particularly objected to as it was only a personal engagement on the part of Major Blair to engage his services as a mediator, and there is nothing to connect the letter with his hospital, and nothing to show that he had any authority to act in this capacity or that he was acting therein in writing the letter on behalf of the hospital. These objections were overruled and exception was noted.

Gov. Ex. 392 was received in evidence and read to the jury as follows:

"Dear Major Blair:

I write to express my appreciation and that of my associates for your accommodation of us in arranging for and taking the time to discuss with Mr. Kirkpatrick and me the

hospitalization problems of the members of Group Health Association, Incorporated. We were glad to present to you and your associates at the hospital our problems as best we could and, particularly, we appreciate your kindness in suggesting that you would look further into the matter and discuss it with others and see what can be done about it.

It occurred to me that you might like to know that in our recent dealings with the Medical Society of the District of Columbia it has been represented by Messrs. Frederick A. Fenning, George P. Hoover and Wm. E. Leahy, and it may be that you will be willing to discuss the matter with these gentlemen. We assure you that we shall be glad to discuss this problem with you and others concerned at any reasonable time, and that we are anxious to make proper provision for our hospitalization which will permit our treatment in the hospitals by competent physicians and surgeons selected by ourselves. We should like very much to avoid any controversy about the matter if we can.

Meanwhile, we shall await word from you as to the course you advise.

Very truly yours,"

Gov. Ex. 532 was received in evidence and read to the jury as follows:

"DEAR MR. RUSSELL:

Replying to your letter of February 9th, I think I understand your method of approaching the hospitalization problems of the members of the Group Health Association, Inc., and for that reason I feel I can say that I try to approach problems in this same way. The problem you have suggested to me is a very big one and the adjustment of the conflicting interests requires tact and persistence and a great deal of trouble to instill into the minds of people whose interests are affected a comprehension of the wisdom necessary to give up a little on their part in consideration of a little being given up on the part of others.

I am not able to clear up your problem for you much as I would like to do so. I will, however, feel around and find just what can be done and if I find any favorable indications, I will arrange a meeting with you. I do not like letter writing because letter writing sometimes adds

to the many misunderstandings which angry discussion always causes and frequently brings about the worst possible results.

Sincerely yours,"

As a result of correspondence I had a conversation with Mr. Aspinwall, President of the Garfield Hospital, in February, 1938.

Q. Will you state to the jury the substance of that conversation?

Defendants objected on the grounds of incompetency, irrelevancy, immateriality, that no conspiracy had been shown, and the question called for hearsay.

These objections were overruled and exception noted.

A. Present there were Mr. Aspinwall, Mr. Ormond Loomis and myself. I told Mr. Aspinwall the purpose of our visit, which was to try to get the members of our staff admitted to the courtesy staff of Garfield Hospital. He knew that Dr. Selders had already had temporary privileges there; but I told him that we were interested not only in one physician, but we were interested in all of them. I asked what he thought he could do to bring about that result. "Well," he said, "I have been following the difficulties that you seem to be having for some time past here and," he said, "I am not altogether in sympathy with some of the opposition that you encounter." He said, "We in the hospital board of trustees are, for the most part, laymen, and we try to be guided in our decisions with respect to the admission of physicians by the conclusions of the medical staff who, in the end, are the ones we deem best fitted to advise us."

He offered also to speak among his friends in the other hospitals and among the physicians here in Washington and see if some solution of this question might not be had. He made this suggestion, that what he called a Committee of Arbitration be established to the end that both sides might submit whatever they chose to that committee, and ask the committee to arrive at a conclusion. That conclusion would be adhered to by agreement of both sides. Nothing ever came of the suggestion, so far as I know. I never heard anything more about it.

During the course of the conversation I told Mr. Aspinwall that word had come to me that the physicians of at

least one hospital in Washington, which perhaps was his, had threatened to walk out if any member of the staff of Group Health Association were admitted to that hospital.

"Well," he says, "I am afraid of that."

"Well," I said, "Mr. Aspinwall, when are the trustees of these hospitals, who certainly have a trust to perform, going to take this question in hand and make some decision about it?"

"Well," he says, "I don't know." He says, "We are pretty much in the hands of the physicians in our hospitals."

He volunteered to ask his counsel, Mr.—I have forgotten the name of the gentleman—to confer with counsel for Group Health Association, just as a matter of clearing up any question of legality that might be in Mr. Dunlop's mind. No questions of the legality of the Association was brought up at that meeting at all. It all hinged on the question of admission of the doctors of our staff as such to the courtesy staff of the hospital."

I heard nothing further from Dr. Aspinwall.

I know Mrs. Eugene Meyer. She is the wife of the owner and publisher of the Washington Post.

Q. Did you ask her to do anything for Group Health Association in the way of getting in any of the hospitals?

The question was objected to on the ground that it was immaterial and that the witness should be limited to identifying any letters written, if he could. The objection was overruled and exception was noted.

A. Yes.

Q. What hospital did you ask her to approach?

A. The Casualty Hospital.

Q. Did she agree to it?

A. She did.

Q. At your request did she write a letter to Mr. Allmond, the secretary of the board of trustees of Casualty Hospital?

Defendants objected on the ground that the question called for a hearsay answer. The objection was overruled and exception was noted.

A. She did.

She showed me the letter she sent them (Gov. Ex. 533). Gov. Ex. 534 is the letter Mrs. Meyer sent me. Gov. Ex. 536 is the letter she enclosed with Gov. Ex. 534.

Gov. Exs. 533, 534, and 536 were offered in evidence. The defendants objected on the grounds of incompetency, irrelevancy and immateriality; that no conspiracy had been proven, and hearsay. The Court overruled these objections, allowed the defendants an exception, and received in evidence Gov. Ex. 536; rejected Gov. Exs. 533 and 534; and permitted the following statement to be made concerning Gov. Ex. 533.

Mr. Lewin: Members of the jury, the Court rules that U. S. Exhibit 533 for identification, Mrs. Meyer's letter, is not admissible, but I am permitted to state that that letter did request from that hospital the admission of Group Health Association doctors for courtesy privileges.

Exhibit 536, however, is received in evidence and it is the reply of S. H. Rogers, president of the board of directors of the Eastern Dispensary and Casualty Hospital, to the letter of Mrs. Meyer, dated June 10, 1938, and on the letterhead of that hospital.

Gov. Ex. 536 was received in evidence and read to the jury as follows:

"DEAR MRS. MEYER:

I wish to acknowledge your letter of the 26th to Mr. Allmond, the Secretary of our Board, on the subject of hospitalization for Group Health Association patients, as I am chairman of the committee which has handled this problem for our board.

Our committee has given very earnest consideration to this problem as relates to our institution, but as stated to Mr. Kirkpatrick and Mr. Loomis at a recent interview, on account of long-established by-laws and rules of our institution we have not been able to work out a plan that permits our accepting patients to be attended by physicians who have not the approval of the local medical society.

We appreciate very much your interest in our institution in connection with this matter, and it is our hope that the Medical Society and the officers of the Group Health Association may soon find a solution to their differences, as we understand they are still working toward that end.

Very truly yours, S. H. Rogers, President, Board of Directors, Eastern Dispensary and Casualty Hospital"

The explanation referred to in the letter occurred at the conversation I testified I had with Mr. Rogers some time in June, 1938. At the time of that conversation Mr. Rogers, Miss Rogers, his sister, Dr. Rogers Young, and Mr. Baker, Mr. Loomis, and myself were present.

Q. Will you state to the jury what the conversation was at that meeting, what you said and what was said by these people representing the hospital?

A. In substance, it was this. We again offered our plea for admission of the members of our staff to Casualty Hospital, and Mr. Rogers led the conversation for the other group, and he said that it had been a tenet of their by-laws for some fifty years that no admission to the courtesy staff of that hospital could be made unless the applicant were a member of the District Medical Society; and he offered that as the one and only stumbling block in the way of admission of any of our staff members to that hospital. I offered at that meeting to enter into a contract with that hospital to take over one of its bays—sick bays—they call them bays or wings of the hospital—which I understood contained approximately 40 beds; that we would rent these beds under contract, provided the hospital would admit our physicians to treat patients who might occupy those beds. But again he offered the objection that the by-laws of the hospital would prevent such action. Finally, addressing Dr. Rogers Young, I think his name is, who I understood was the man in charge of the surgical staff of that hospital, or its medical staff, I said to him, "Doctor, when are you hospital people going to stand up on your hind feet and assert your rights in this question?" His reply was that he did not know. After a little more discussion about the subject in general the meeting ended.

Dr. J. Rogers Young was present during the interview and sat right across the table from me and was in a position where he could hear the entire conversation.

Cross-examination.

By Mr. Leahy:

The conversation I had at Casualty was early in June. In that conversation Mr. Rogers said that it had been a part of their by-laws for upwards of 50 years that appoint-

ment to the courtesy staff of their hospital was confined to members of the District Medical Society.

Q. What you wanted them to do was to change those by-laws to admit your doctors; is that right?

A. I wanted them to do anything they thought best to do.

Q. To do that you knew they would have to change the by-laws which had been in effect fifty years?

A. Perhaps.

Q. You knew that, didn't you?

A. No; I didn't know that at all. I had nothing to do with what they should do. All I was interested in was getting our staff in there. How they did it I wasn't concerned with.

Q. But you knew they could not get in there unless they changed the by-laws which had been in force for fifty years?

A. Yes; from the statement of Dr. Rogers.

On June 10 I received a reply from S. H. Rogers, and he reiterated the by-laws on the matter.

Q. In connection with that do you recall that Mr. Rogers said anything about the fact that Casualty Hospital was incorporated to take care of the poor?

A. No. I recall no such statement as that. He may have made it, but I don't recall it.

Q. See if I can refresh your recollection. Do you recall whether Mr. Rogers said to you that Casualty Hospital was incorporated to take care of the poor and the indigent, and you replied, "We are not interested in that"?

A. No; I don't recall any such thing.

Q. Would you say it was not said?

A. I will say that I don't think I said it.

Q. Was there anything said that Casualty Hospital was approaching its 50th anniversary of existence?

A. I don't recall that. The only reference to 50 years was Mr. Rogers' statement about the by-laws.

Q. Did you then tell Dr. Rogers that if he would let you take this bay of 40 beds you would get Mr. Acton, the publicity agent for G. H. A., to push Casualty and give them great publicity on their 50th anniversary?

A. Never made any such statement.

Q. Nothing like that in substance?

A. Nothing like that, approaching it, near it, or anything around that.

Q. Did Mr. Loomis make any such statement?
A. I don't know.
Q. You were there, weren't you?
A. I was there, but I don't recall his making any such
ement.
Q. Would you say he did not make such a statement?
A. I will hazard a guess that he didn't make it.
Q. So your answer as to this conversation is that nothing
s said about the incorporation of Casualty Hospital to
end that it was to take care of the sick and the indigent,
which you were not interested?
A. Nothing that I recall at all about that.
Q. And that nothing was said about booming Casualty
ey would let G. H. A. patients take over that bay?
A. No. We had no interest in booming Casualty or any-
g else.

oward Acton is chairman or director of public rela-
s for the Home Owners' Loan Bank Board. I don't
k he had anything to do with establishing Group Health.
knew in January that it was the statement of the super-
ndent of Garfield Hospital that the hospital could not
nit Dr. Selders to staff privileges in Garfield until the
lity of Group Health was determined. I wrote to Gar-
on February 2nd. On January 28, 1938, I had signed
tition for a declaratory judgment in this Court. The
ature on the petition is mine. In that respect we were
esented by Mr. Horace Russell, Mr. Keeley, Mr. Long,
Mr. Newton, all employees of Home Owners' Loan Cor-
tion. I swore to the petition on January 27; my
nature appears on oath.

Q. Did you swear on January 27 that on or about Janu-
15, 1938, notice was given by the defendant, David A.
, Acting United States District Attorney for the Dis-
of Columbia, to the plaintiff, that, unless operations
immediately suspended and the affairs of the plaintiff
wound up, a bill for injunction or legal proceedings
ing to the involuntary dissolution of the plaintiff cor-
tion would be brought against the plaintiff on the
nd that it, said plaintiff, is illegally engaged in the
ice of medicine, as the same is defined by the Healing
Practice Act in the District of Columbia, and is illegally
ged in the insurance business within the meaning of

Title V, Chapter 7, Section 179 of the Code of Laws of the District of Columbia?

The Government objected on the ground of immateriality and that the question is outside the scope of direct examination. The defendants offered to prove that this witness had sworn to the facts stated at a time when he was pressing the hospital for admission of Group Health doctors to its staff; that the question of legality of Group Health had been brought out on direct examination and the witness had written letters on that very question. The Government's objection was sustained and exception noted.

I identify Gov. Ex. 432 as a letter written by me and Gov. Ex. 433 as a reply to my letter. At the conversation which followed with Mr. Aspinwall we didn't discuss the question of the legality of Group Health.

I wrote Mr. Aspinwall (Gov. Ex. 432) that I felt there may have arisen some misunderstanding concerning the legality of our operation, and in order that the question might be discussed and a clear understanding had by both parties I request that representatives of Group Health be accorded the privilege of appearing before the board of trustees for the purpose of discussing the situation. On February 3 I received a reply from Mr. Aspinwall that he would be glad to discuss the matter. When I talked with Mr. Aspinwall we didn't discuss that. Legality was one of the things we wanted to discuss and I didn't state in my letter that there was anything else I wanted to discuss. I knew that three or four days before there had been filed in this Court the petition which I signed and to which I swore. I admit that the suit was filed to raise the question of the legality of Group Health.

On February 2, 1938, I wrote Episcopal Hospital. I didn't ask for privileges for all of our doctors. I asked for privileges for Dr. Dabney. Dr. Dabney was on the staff. I asked for privileges because he couldn't take our patients in as a member of our Association. As I said the other day he took them in through the back door. Dr. Dabney took approximately 50 Group Health patients to Episcopal Hospital. We paid for these patients with Group Health checks. Dr. Dabney was never removed from the staff of Episcopal Hospital. He told me he had been on the staff for a good many years. While he was with Group Health he remained on the staff. Dr. Dabney told

me that they dared not touch him at Episcopal and they had to let him bring patients there, even by the back door. We did get our Group Health patients in Episcopal Hospital under this surreptitious arrangement. Dr. Dabney wasn't admitted there as a surgeon or physician recognized by the hospital as being on our staff. He was there as a private physician, and he brought our members in there as his private patients. We wanted him recognized as a member of our staff. We didn't like this business of him having to take patients in there quietly, any more than he did. I never talked to anybody at Episcopal Hospital about this. All the information I have, I obtained from Dr. Dabney. We never had a bit of difficulty at Group Health in having cases treated at Episcopal; in other words, any Group Health patient who was under Dr. Dabney's care while he was with Group Health was treated at Episcopal Hospital without any difficulty.

I think in writing to Columbia Hospital I asked for privileges for all the members of our staff and the identical request was made to all the hospitals. I never discussed the matter with anybody at Columbia. In 1938 we had no obstetrician, and Dr. Selders felt himself qualified to administer to or treat obstetrical cases to a limited degree. I don't think he ever got privileges at Columbia; I am not sure of that.

Q. Did you state on Monday that he never got any privilege in Columbia?

A. Did I what?

Q. Did you state on Monday that Dr. Selders was not permitted to go to Columbia?

A. I perhaps did.

Q. Why did you make that statement?

A. Well, that was my recollection.

Q. On what was your recollection based on Monday?

A. On my memory.

Q. Has your memory changed now, since Monday?

A. No, sir.

Q. Will you tell the jury whether he did or did not get the privilege?

A. My answer is exactly the same as it was on Monday.

Q. What is that?

A. That I don't recall whether he ever treated anyone there or not, but I do know that he wanted to get this limited obstetrical arrangement, as he described it.

Q. See if I can refresh your recollection, Mr. Kirkpatrick.

At the time you were writing these letters to the hospitals, and more particularly this one to Columbia, didn't you know that Dr. Selders was asking for the widest privileges for a surgeon to ask?

A. Mr. Leahy,——

Q. Yes or no.

A. No, I don't know anything about that, what he was asking for.

I didn't inquire of Columbia Hospital about any doctor other than Dr. Selders and so far as I knew, no other doctor had made application to Columbia Hospital. I didn't know for what privileges Dr. Selders had applied; I had nothing to do with that. All I wanted was for him to be admitted to the hospital for whatever thing he thought he could do. I had nothing to say with what he thought he could practice there. That is his business. I am a layman. On February 5 I learned that the medical board had made no recommendation on Dr. Selders' application to the board of directors. I don't remember any correspondence with Columbia following my letter of February 5, 1938. I don't remember any letter of March 3, 1938, in which Columbia Hospital advised Group Health that Dr. Selders had been given privileges. I know as a fact Dr. Selders had privileges in Columbia Hospital as a representative of Group Health and as one of our staff members from March, 1938, for obstetrical work. He may have had such a status there.

Q. Did you know about the action of the Board of Columbia Hospital that Dr. Selders had been admitted?

A. No, I was never so notified.

Q. Did you know that Dr. Selders wasn't found qualified for major surgery for which he asked?

A. No.

I knew that Mr. Penniman had written Garfield Hospital requesting that Dr. Selders be admitted on the staff. I know that he had been granted temporary privileges. I knew that on the 25th or 28th of January, that temporary privileges had been withdrawn.

Q. Now, did you personally as President of Group Health do anything between your letter of February 2 to Garfield Hospital and your letter of July 28th, 1938?

A. I don't think so, unless this meeting with Mr. Aspinwall came before the July 28 letter. I am not sure about that.

Q. You aren't sure on that?

A. No. But I will say this, that if it came before the letter of July 28th, then I did that, had that meeting.

I think Dr. Halstead, of our staff, made an application to Garfield Hospital in August, 1938.

Q. Do you know whether there were any of the members of your staff who had courtesy privileges at Garfield Hospital besides Dr. Selders on temporary?

A. Perhaps Dr. Cahoon, either in the very early part of 1939, or the last of 1938.

Q. You mean the early part of 1937?

A. No, I mean 1939.

Mr. Kelleher. I object to that, and move that be stricken. It is outside the scope of the indictment.

The Court: Yes. Confine yourself to that.

I knew that Dr. Scandiffio and Dr. Lee of our staff had courtesy privileges at Garfield Hospital in 1937 and 1938. Two other applications at Garfield besides Dr. Scandiffio and Dr. Lee, were acted favorably upon about a year or so after we opened our clinic. I handled some of the correspondence at Group Health and our administrator, Mr. Perry Taylor, handled some, and the medical director handled some. Perry Taylor came to Group Health in July, 1938. Mr. Penniman and I handled the correspondence concerning applications for courtesy privileges at the hospitals. I question whether Dr. Brown handled any correspondence with reference to the applications for courtesy privileges.

Q. Well, then, you didn't wish to leave with the jury on Monday last the impression that none of the doctors of your staff had courtesy privileges at Garfield during this period, did you?

A. Yes. I think that is a fair impression to leave with this jury. I don't see anything in this picture that would lead otherwise.

Q. Well, you don't know much as to whether there were two or four members of your staff?

A. I think I have a pretty good knowledge of the general picture, Mr. Leahy. If you are going to get down into details I may be a little hazy on details.

Q. All right. Answer the simple question.

A. Yes.

Q. In 1937 and 1938 how many members of your staff had courtesy privileges at Garfield?

A. From my conversation with them I should say that Dr. Scandiffio and Dr. Lee had courtesy privileges in 1937, but from my conversation also with them I should say that they didn't have them in 1938.

Q. Now will you answer whether or not any applications were filed other than those of Doctors Scandiffio and Lee, which were acted favorably upon, for courtesy privileges at Garfield?

A. In what period?

Q. In that same period.

A. In what period is that?

Q. In 1937 and 1938.

A. Other than Dr. Selders I don't know of any.

Q. You don't know of any?

A. No.

I wrote a letter to Sibley Hospital on February 2, 1938. I remember seeing some correspondence from Sibley Hospital to the effect that all of Dr. Selders' references had not been heard from. I didn't investigate any of the persons vouching for Dr. Selders, as president of Group Health. I had nothing to do with that. I first met Dr. Selders in June, 1937. I didn't know that he had just completed his residency at Worcester, Massachusetts, Hospital. I was on the board of trustees of Group Health which hired Dr. Selders. I don't know now whether he graduated a week or ten years before we hired him. Dr. Selders was our only surgeon for five or six thousand people. I don't now know what his qualifications were, and have no apology in that respect. The reply from Sibley Hospital did not come to me but went to Dr. Selders, and went into the clinic's file.

Q. Then you know what I am talking about?

A. Yes. You asked me if I received a reply and my answer was no.

Q. Let us see how good your recollection is. It came to you personally, didn't it? Take a look at the letter (indicating).

A. Yes, sir. That came to me personally.

Q. Wrong again.

A. Perhaps I may be wrong many times.

When I received the letter from Sibley I took no steps to supply the hospital with further information except to ask Dr. Selders if he had gotten in touch with his references to see if they could make reply to whatever letters were necessary. That is all I did as president of Group Health.

By Mr. Leahy:

Q. Do you know whether Dr. Selders ever supplied that information, Mr. Kirkpatrick?

A. I remember seeing a letter here acknowledging the receipt of three or four—out of four, I understand.

By Mr. Lewin:

Q. Isn't that in this very letter (indicating)?

A. Yes, sir. He says he received three of them, in that letter. That is the letter I referred to.

On February 24 I saw a letter from Dr. Taylor to Dr. Selders advising him that the committee did not reverse its former action and that his request had been refused. I asked that Dr. Selders be admitted to the courtesy staff to do anything that he or they agreed he could do. We didn't undertake to say what these doctors should practice. It is up to them to arrive at that conclusion. When I learned Dr. Selders had been rejected I didn't make any inquiry at Sibley Hospital to determine why. I never was in Providence Hospital in my life. I have never met Sister Rosa. I have never met Sister Rodriguez at Georgetown. I never went to Georgetown personally. My recollection is that Dr. Selders' application in either or both of these hospitals had been disapproved or no decision made. I never followed up the correspondence personally after that. I never met anyone at Homeopathic Hospital. I received from Homeopathic Hospital advice that Dr. Selders' application had been disapproved. I didn't follow that up personally. I didn't find out the reason why Dr. Selders' application at these three hospitals had been rejected. I don't know what Dr. Selders had been making application for in any of the three hospitals. When I corresponded with Emergency I received a prompt response which quoted a paragraph from the by-laws of the hospital requiring of applicants for membership on the staff, membership in the Medical Society, which by-law, I think, was adopted in 1936.

When I had my conversation with Mr. Blair I was accompanied by Mr. Horace Russell, who is general counsel of the Federal Home Loan Bank Board, and a member of the board of trustees of Group Health. The regulation of 1936 requiring membership in the Medical Society was not discussed, as I recall, nor was the question of the illegality of Group Health. Following the conversation I had with Mr. Blair I had no further conversation at all with anybody in Emergency Hospital. I brought to the attention of the hospitals the decision of Justice Bailey in this Court on July 28, 1938, by sending a letter to each hospital. Following the sending of those letters I received a response from some of the hospitals acknowledging the letter. I didn't do anything personally to follow up those letters.

Dr. Selders remained with us until January, 1939, when I asked for his resignation. I was on the board of trustees of Group Health at that time. I first came to the board in April, 1937. Dr. Brown was first employed in June, 1937. Group Health acting through its board of trustees, employed Dr. Brown, and Dr. Brown made recommendations to the board in the employment of other physicians and the board did the actual technical employing.

Sometime in June, 1938, I had a series of correspondence with Sibley Hospital. We had two or three members in attendance at Sibley Hospital, and those patients were discharged. In the regular course of things we tendered our check in payment for the services there and in all three cases the checks were declined, and the correspondence grew out of the declination of those checks.

I recall receiving a letter from Dr. Hare of the Washington Sanitarium and Hospital dated February 8 (Gov. Ex. 452) acknowledging my letter of February 4, advising that the application of Dr. Selders would be considered. I don't remember what courtesy privileges we were applying for for Dr. Selders, as Dr. Selders filled out the application blank. Later Dr. Hare wrote (Gov. Ex. 453) and stated that in view of the fact that there were some problems involved, "it was voted that the application of Dr. Selders be tabled." The only other thing I did concerning Washington Sanitarium and Hospital was to write them on July 28, 1938, concerning Judge Bailey's decision.

In February, I wrote to George Washington University Hospital concerning Dr. Selders' privileges and received a reply that they couldn't grant the privileges applied for

by Dr. Selders. I didn't follow up that letter to find out why they couldn't do so, nor did anybody for me.

Gov. Ex. 458 has reference to Dr. Price. I believe Dr. Price retired from Group Health after I retired from the board in November, 1939. I had some discussion with Dr. Price toward the end of 1938.

On January 20, 1938, Sibley Hospital wrote that they could not grant Dr. Selders' application because he had not supplied references. On February 24, 1938, (Gov. Ex. 412) they wrote to Dr. Selders stating that the committee didn't reverse its decision. I knew that Sibley Hospital had a rule in common with other Washington hospitals requiring any doctor practicing in Sibley Hospital to be a member of the staff. In the month of February I knew that Dr. Selders didn't have privileges at Sibley Hospital. Sometime before February 5, I sent a check to Dr. Taylor, Superintendent of Sibley Hospital. I received a letter from Dr. Taylor (Gov. Ex. 417) stating that Miss Tommie Lee Nix, on December 24, 1937, was admitted "to this hospital on service of Dr. Rush Conklin; later she was transferred to the service of Dr. Little, and was then operated on by Dr. Cobb. On her admission card responsibility for the payment of her bill is assumed by James R. Nix and we look to him for the settlement of this account." I had not had any correspondence before from Dr. Taylor in the case of anyone who had gone to the hospital. I sent the Nix check back to Dr. Taylor two or three times, and I did it because I wanted to establish the fact that we could pay the bill with our own check. I did this because we felt we had a right to discharge this liability, which we regarded as ours; and because we wanted to establish the fact that we had the full right to have the hospital accept our check, just as the other hospitals had. Every other hospital to which we had sent checks accepted them and Sibley was the only hospital with which we had any differences. We wanted Sibley's endorsement on our check. We were simply trying to establish the validity of us tendering a check and have them accept it. I was trying to make Dr. Taylor accept our check. He told me someone else was responsible, and he said the fact of such responsibility was evidenced by the notation on the admission card of the patient. On February 18 I sent (Gov. Ex. 418) and said in my letter in response to Dr. Taylor's statement that he considered the check was evidently sent in error, that I wanted him to know

that there was no mistake on my part in transmitting the check in question. I said in my letter, "Under the provisions of the by-laws of Group Health, Inc., Miss Nix is entitled to have provided to her hospitalization, when such is necessary. Miss Nix having received hospitalization in your institution for the dates mentioned is therefore entitled to have the cost of that hospitalization paid for by Group Health, Inc. Your attention is invited to the fact that the stub which contains the notation referred to is not in any sense a part of the body of the check. The stub is provided only for the information of the payee as to what the check is entitled to cover. In depositing the check, if you so desire, the stub, of course, may be detached before the check is deposited. We are therefore returning the check to you and ask that it be deposited in the usual course." I think Dr. Taylor sent the check back again on February 21. He called my attention to the fact that she had signed her own card and that the card has the name of her brother James R. Nix, as the person responsible for the bill. We didn't consider Mr. James R. Nix responsible for the bill; we considered ourselves responsible for it. We were going to get Sibley to accept the check if we could. We finally settled it. We got no record from Sibley Hospital that we had paid the bill. We gave the money to someone at Sibley. We asked for a receipt, but didn't receive one.

I asked Dr. Mitchell of Emergency Hospital if it was a fact that every member of the staff was a member of the Medical Society and he replied each time in the affirmative, but I knew this was error, as I know of the case of Dr. McCready, who was on the staff, but was not a member of the Medical Society, because he showed me a letter appointing him to the staff a week before. That was in the early spring of 1938, when he was serving as a refractionist for Group Health. He was employed by Group Health to refract eyes at five dollars a case. He was not a member of our staff, but was on a fee basis. I didn't tell Dr. Mitchell that we had a member of our Association on the hospital staff at Emergency because we didn't consider him a member of our staff as he was employed on a fee basis. I didn't tell Dr. Mitchell Dr. McCready was on our staff on a fee basis. I don't know of my own knowledge that Dr. McCready wasn't a member of the Medical Society. He told me he wasn't. I never inquired of the District Medical

Society, and took Dr. McCready's word for it. Other physicians doing work for Group Health on a fee basis were Dr. Eckleby, the defendant Dr. Warfield, and Dr. Ledbetter, who did work for us and we paid them. I should say there were six or eight or possibly a dozen doctors who did work for us on a fee basis. I don't know who on the staff could do the work Dr. Ledbetter does. I didn't get into this medical question at all. We have nobody on the staff to do orthopedic work and I don't know what work Dr. Ledbetter did. We didn't have a written agreement with Dr. McCready or with any of the doctors on our fee basis staff, and we have never had any written agreements with any doctors on our staff.

Redirect examination.

I don't find Dr. McCready's name on Gov. Ex. 32 (Roster of Medical Society of District of Columbia).

I had a meeting with Mr. Rogers of Casualty Hospital at which Mr. Rogers said that it was part of their by-laws that they could not accept on their courtesy staff non-members of the District of Columbia Medical Society. Gov. Ex. 403 is a letter which Dr. Rogers sent to me in which he said that if Dr. Selders will submit a further application it will receive consideration.

Q. Is there anything in that last communication indicating that there was some iron-clad rule which would prevent the doctor from receiving staff privileges notwithstanding he was not a member of the Society?

Mr. Leahy: I submit it speaks for itself.

The Witness: There certainly isn't.

The Court: I can see the necessity for counsel on both sides having to refer to letters. It is imposible for the jury to understand otherwise what they are talking about.

MARY FRANCES STUART [illegible], a witness for the United States.

Direct examination.

By Mr. Lewin:

In 1937 I was Miss Stuart, and was laboratory technician of Group Health. I graduated with an A. B. degree,

majored in science, and then I took a year's course at the University of Virginia Medical School as a laboratory technician.

I was taken ill on November 17, 1937. I awaked at six-thirty in the morning with a severe abdominal pain, got out of bed and fainted. Dr. Allan Lee, on the staff of Group Health, visited me very soon after I called him. He made an examination and recommended I be taken to Garfield Hospital. I was taken to the hospital in an ambulance. I arrived at the hospital around ten o'clock.

Q. Did he tell you that an operation would be necessary?

The defendants objected on the ground this is hearsay. The objection was overruled and exception noted.

A. He thought before I left home, he told me before I left home an operation would be necessary.

I left it to him to engage a surgeon and I didn't know who the surgeon would be. On arriving at Garfield I was put to bed. I don't know how long I was in the hospital, it seemed to me long, and then Dr. Herbert H. Schoenfeld came. As I recall no treatment was given me while awaiting the doctor's arrival.

Q. When the doctor finally came, who was he?
A. Dr. Schoenfeld.
Q. Is that Dr. Herbert H. Schoenfeld?
A. Yes.
Q. And did he then give you any treatment?
A. I had an injection before I was taken to the operating room.
Q. Yes, but did he give you any treatment after examining you?
A. No.
Q. Did he give you that treatment after he came back?
A. I don't recall.

When he returned, in about an hour, he had an assistant with him. I was later operated on by Dr. Schoenfeld in the early afternoon.

DR. ALLEN E. LEE, a witness for the United States.

Direct examination.

By Mr. Kelleher:

I am a Doctor of Medicine. I limit my practice to diagnosis and internal medicine. I am a general internist. I obtained my doctor's degree at the University of Michigan in 1930; I had some postgraduate work at Ohio State in 1932; in 1931 I was in Cleveland, in 1932 at Columbus. I was chief resident at the Ohio State University. After leaving Ohio State I went to Ann Arbor and then came to Washington to practice medicine in 1934. At Ann Arbor I did some studies in internal medicine at the University of Michigan; then I came to Georgetown where I was instructor in internal medicine in the Medical Department. While at Georgetown I had a course in Materia Medica with the nurses and later I taught some classes of nurses at Garfield. I joined the Medical Association in 1935.

In the latter part of 1937 I joined the staff of Group Health. I was affiliated with the clinic when it opened. Mary Frances Stuart was a patient of mine at the clinic shortly after I went there. My record shows that I saw Miss Stuart on November 18, 1937, at 7:30 a. m. After examining her carefully I made a diagnosis of one of two possibilities which I indicated as an acute appendix, possibly rupture, or possibly a ruptured ovarian cyst, with hemorrhage. That was my working diagnosis at that time. She was in shock, surgical shock, and had a surgically acute abdomen. Surgical shock is a condition in which a patient's bodily functions have more or less collapsed; the circulation, and possibly involving blood pressure and heart function, cerebral function. We consider that a serious condition and the shock is usually considered a critical thing. Ruptured internal viscus produces shock. It doesn't necessarily produce death within a short length of time. It is not as bad as a traumatic shock or a shock following an accident. I ordered Miss Stuart to be brought to Garfield Hospital after I spoke to Dr. Brown. Miss Stuart was in a more or less semi-stuporous condition at that time, and my opinion was that surgery was indicated as soon as possible. I am not a surgeon. Miss Stuart voiced a request for a surgeon at that time and that surgeon was called, Dr. Schoenfeld. I called Dr.

Schoenfeld, described the case, gave him my diagnosis and stated I thought the patient was in a serious condition and would appreciate his seeing her as soon as possible. Dr. Schoenfeld was to meet me as early as possible at the hospital. When I arrived at the Hospital I met Dr. Schoenfeld. He operated upon Miss Stuart in my presence. The operation showed cystic tumors of both ovaries and tubes, with hemorrhage. The right ovary was ruptured, accompanied by hemorrhage. That condition is serious, because it is a ruptured viscus, but is not such that it will cause death immediately. From the amount of hemorrhage when the patient was on the operating table, I would say it wasn't serious, but clinically a ruptured viscus is usually considered a serious diagnosis.

Prior to joining Group Health I notified the Medical Society that I intended to resign. Gov. Ex. 41 is my resignation. I received a letter from the Society saying I was to be taken before the Compensation, Contract and Industrial Medical Committee, or that my standing was to be taken before them, that committee, in consideration of the contract which I was to have had with Group Health. Gov. Ex. 39 I received from Dr. Hooe. After receiving this letter I had several conversations with Dr. Hooe and told him that as I had sent in my resignation I was not subject to any call by his committee. I don't recall what he said. Later I received a notice to appear before the Executive Committee.

Q. Did you have any hearing before the C. C. & I. M. Committee?

A. Well, I recall having no hearing until the very last night, at which time I enclosed my resignation from Group Health.

That was after the hearing of the Executive Committee started. That was the only meeting I recall being in. It was the Executive Committee, I believe, in joint session with the Contract Committee. I had no hearing before the C. C. and I. M. Committee prior to December 6, 1937. At that meeting of December 6, 1937, I appeared to explain the contract at issue between me and Group Health. The entire group asked questions. I believe I was questioned by attorneys. On December 10 I had a telephone conversation with Dr. Hooe, during which he stated that the proceedings would be dropped or that my standing would be

unaffected in the Society should he have a copy of my resignation by a certain time that evening, that was my resignation from Group Health. On that occasion I believe I called Dr. Hooe. I enclosed my resignation from Group Health and attended a meeting at the Medical Society building as a member in good standing of the Society. After sending in my resignation I met Dr. Hooe, who requested that I stop in before the Contract Committee and he would announce that all proceedings would be dropped. I went before them and Dr. Hooe announced that the proceedings were dropped and that my standing was unaltered, in accordance with the fact that he had notice of my resignation from Group Health. Gov. Ex. 60 is my resignation to Dr. Brown, a copy of which I sent Dr. Hooe. I received Gov. Ex. 61.

Cross-examination.

By Mr. Leahy:

I saw Miss Stuart at 7:30 a. m. Dr. Brown suggested the name of Dr. Schoenfeld. I don't know what time Miss Stuart arrived at Garfield, but I didn't get there until sometime before twelve o'clock. I don't remember the exact time but I recall coming into the hospital, meeting Dr. Schoenfeld, and my impression was at the time that he had seen the patient, and from then on we had our contact. Some time has to elapse in the preparation for an operation. The operating room has to be gotten in order and the patient prepared for the operation. I have a note that she was operated on at 11:30 a. m. The operation disclosed that my diagnosis was substantially correct. There was a hemorrhage in the pelvic cavity. This hemorrhage was of such volume as would have endangered her life.

I submitted my resignation to the Medical Society on October 30, 1937. I arrived at the conclusion to resign, feeling perhaps I ought to avoid a lot of time in controversy. "That conclusion was made unadvised." That conclusion was "my own good judgment." I recall that I made an attempt to recall my resignation, since there was no action on it, and, in that connection, I wrote Gov. Ex. 43. That letter was written after I had a conference with Mr. Penniman and Mr. Zimmerman, and there might have been some legal counsel with us at the time, as there were lawyers there. The letter to a great extent was my own suggestion. At the

hearing on December 6 there was an imposing array of lawyers for Group Health, some four or five. Mr. Russell, Mr. York, and some others; practically the same persons attended the December 10 hearing. The Executive Committee was sitting there, it seemed to me at the time, as a combination of judge, lawyer, district attorney—a pretty complete group of itself. They all seemed to ask questions. The lawyers for Group Health also asked questions, but we did not have much opportunity to explain. The lawyers for the Committee also asked questions.

My resignation from Group Health was my own deliberate judgment, without advice from any lawyers. I didn't want to waste time in a controversy that I could devote to my own practice of medicine, taking care of the sick. I arrived at the conclusion that perhaps the private practice of medicine in which I was then devoting most of my time was for me more preferable than Group Health. I arrived at the conclusion to resign from Group Health because I felt that I was wasting a good deal of time that should be devoted to the care of sick people rather than to be involved in a controversy between Group Health and the Medical Society. I could have devoted my entire time to Group Health, but it seemed to me that private practice was much more preferable.

Redirect examination:

I think that the controversy between Group Health and the Medical Society was the cause of my resignation from Group Health.

Recross examination:

The desire to devote my life to private practice was a factor in my decision to resign from Group Health. I had a preference for private practice as opposed to Group Health should there exist any controversy about the group practice type of medicine.

Redirect examination:

The question that if there had been no controversy would I have resigned from Group Health is hypothetical. If there had not been any controversy I might have still felt that some medical opinion ought to give the group type of practice support.

SARAH ABBOTT, a witness for the United States.

Direct examination.

By Mr. Kelleher:

In 1937 and 1938 I was employed in the Home Owners' Loan Corporation. I was one of the original members of Group Health. On January 26, 1938, I was injured in an automobile accident. I found I could not stand on my leg and an ambulance was sent from Emergency Hospital for me. The interne thought the leg was broken. When I reached the hospital I was taken into the emergency room and when I told them I was a member of Group Health the interne said——

The defendants objected on the ground the statement was incompetent, irrelevant and immaterial, and hearsay, and that it was not shown that the interne had any authority to speak for the hospital. The objection was overruled and exception noted.

The Witness: So, then, I called a Group Health physician, but I didn't have the night telephone number and it wasn't in the telephone directory at that time, because they were recently given it. So I suggested several people to telephone to, and they could not get any of them; they were not in at that time. So one of the friends who came with me agreed privately that she would telephone a Group Health doctor in the morning. She didn't have the night telephone number. So an interne came around and I said, "Well,——

The objection was renewed. It was overruled and exception noted.

A. The interne told me that I couldn't stay there as a member of Group Health; that I could send for a physician outside if I wanted to; and I suggested one of the doctors who is a member of the Emergency staff, but they said he was not a surgeon, so he wouldn't do. Then this interne told me that I couldn't stay there at all as a member of Group Health and I couldn't stay there that night unless I permitted the hospital to choose the physician. Then I asked him whom he was going to select, and he said, Dr. Marbury. I didn't know him, but I agreed to anything at that time, it was taking so long telephoning.

The various telephone calls and my conversation with the interne took nearly an hour. I was laid on one of the emergency beds. I didn't receive any treatment at all in the emergency room and when I agreed to take a room I was taken up to the room and the nurse took care of me the best she could that night. She used hot water bottles, if I remember rightly. There was no medical attention that night. No doctor came that night. Dr. Marbury didn't come. I wanted some one of the Group Health doctors that night, but as they could not get in touch with them I, of course, had to give that up and there was nothing for me to do except to agree to stay. The next morning Dr. Marbury came in and ordered an X-ray and shortly after that he left and Dr. Selders came in and I told Dr. Selders what had happened and that I had no objection to staying at Emergency if he could arrange it, and it was agreed that if he could not arrange it he would send in some ambulance and have me taken to another hospital. I think it must have been less than half of an hour when the ambulance men came in for me and they put me on a stretcher and gathered up all my things and then I was taken and turned over to Garfield. At Garfield they admitted me at once and Dr. Selders came in and ordered an X-ray. That was taken and I was taken to a ward at first and then was taken to a semi-private room. Dr. Selders came in to see me every day and he was just splendid and gave me the best of care and left his directions daily with the nurse, so I had nothing to complain about as to hospital treatment. It was very good.

Cross-examination.

By Mr. Leahy:

The accident happened a little after ten on the night of January 26, 1938. I think I arrived at the hospital at halfpast eleven—no, perhaps halfpast ten. For an hour I tried to get the doctors at Group Health, and my friends say it was along toward midnight before they got away. From ten-thirty until midnight I couldn't reach any of the doctors of Group Health. I didn't call for any doctor that night at Emergency. I suggested a doctor who was on their staff, whom the interne said was not a surgeon, so he could not consider it. The interne made a suggestion and told me that I could not stay there unless the hospital was per-

mitted to select the doctor. The interne made me agree to that and I agreed to take a room. I did not try to get any doctor that night at anybody's suggestion after I found I could not get a Group Health doctor. The hospital assigned me to a room and asked whom they were going to get, what doctor, and then the interne said Dr. Marbury whom I didn't know. I have been in Washington 29 years but I had never heard of Dr. Marbury. Dr. Marbury came in the next morning, somewhere about eight o'clock, and a half hour after he left Dr. Selders came in. A friend of mine had phoned Dr. Selders the next morning. By ten-thirty the next morning, I suppose, I arrived at Garfield Hospital. Dr. Marbury examined my leg, asked how it happened, and he recommended that an X ray be taken after his examination, and said nothing else. I don't remember the name of the interne. When I arrived at Garfield Hospital an X-ray was taken. I was assigned to a semi-private room and I remained there three weeks.

Gov. Ex. 475, letter from Gist Blair, President of Emergency Hospital to the president and board of directors of Garfield Hospital, dated January 27, 1938, was read to the jury, as follows:

"GENTLEMEN:

Miss Sarah Abbott was brought to this institution by the hospital ambulance on the evening of January 26th. She was given first aid in the emergency room and assigned to a bed in the hospital under the care of the staff surgeon on that service, with a diagnosis of possible fracture and possibly other injuries.

On January 27th, about noon, Dr. Raymond E. Selders, of Group Health Association, Inc., called and requested permission from the hospital authorities to take over the medical care of Miss Abbott, due to the fact that she was a member of Group Health Association, Inc.

Dr. Selders was advised that we were informed that he was not a member of the District Medical Society and he was not on our courtesy list, and therefore we could not extend him the privileges requested. It is a prerequisite with this hospital for practicing physicians, to become a member of our courtesy list, to belong to the Medical Society of the District of Columbia.

Dr. Selders contacted Dr. Henry Rolf Brown, at this office, in charge of Group Health Association, Inc., whereupon

Dr. Brown called the Superintendent of this hospital and demanded a direct answer as to whether Dr. Selders would be permitted to take entire direct medical charge of the patient. He was advised that due to the fact that Dr. Selders was not on our courtesy list, we could not extend him that privilege, but Dr. Selders was advised that he would be privileged to visit and observe the patient and consult with the staff doctor in charge. Dr. Brown then advised that he was sending an ambulance for the patient to be removed from this institution, and a short time later an ambulance from Garfield Memorial Hospital arrived, and we understand the patient was taken to Garfield Memorial Hospital.

We shall be under obligation to you for a full explanation of the circumstances under which this patient has been permitted to enter Garfield since it is not unlikely that we may be criticized for having declined to care for the patient as described when Garfield apparently is willing to take the patient as described.

Thanking you for as full an explanation of this case as you can possibly give us,

Very truly yours, Gist Blair, President. P. S. Copy to Medical Society, District of Columbia."

Gov. Ex. 476, reply of the president of Garfield Hospital to letter of Major Blair, dated January 29, 1938, was received in evidence, and read to the jury, as follows:

"DEAR MAJOR BLAIR:

Your letter of the 27th in regard to Dr. Selders' patient has been sent to me.

This patient was brought in to the Garfield Hospital by private ambulance on the 27th at 3 p. m., with a fractured leg, and was admitted to Ward H.

In regard to Dr. Selders himself, he had been given the temporary courtesy privileges in accordance with our general practice, pending report on his credentials and standing, by the Staff. Upon the recommendation of the Staff these temporary courtesy privileges were withdrawn from Dr. Selders by the Board of Directors at its meeting on Tuesday the 25th instant. However, the notification of this action had not been received by Dr. Selders on the 27th when the patient in question was brought to the hospital.

I observe that you have sent a copy of your letter under acknowledgment to the Medical Society of the District of

Columbia, and I am, therefore, sending a copy of this reply to them also.

Yours very truly,"

Gov. Ex. 76, letter from President Blair of Emergency Hospital to the Medical Society of the District of Columbia, dated January 27, 1938, was received in evidence and read to the jury as follows:

"My dear Dr. Conklin:

I feel sure that the Medical Society of the District of Columbia wish this hospital to be able to carry on its work without unnecessary criticism, and we never have any favorites in the medical profession, although we have a staff of physicians accepted as the leading physicians in the city of Washington, who generously extend the privileges of the hospital to all those whom they believe capable and proper. This list is called our courtesy list.

Inasmuch as we cooperate with the Medical Society wherever we believe the best interests of the public are served by it and we sustain our staff in its selection of this courtesy list, provided it includes the leading practitioners of the District of Columbia, therefore the enclosed letter is one which I wish you would bring before your Board and executive authorities. I would suggest that the enclosed letter be read carefully and a reply, which will enable us to not only care for this case but similar cases which may arise in the future, be given us.

Thanking you,

Very truly yours, Emergency Hospital, Gist Blair, President."

Gov. Ex. 75, Dr. Conklin's reply to Major Gist Blair, dated January 29, 1938, was received in evidence, and read to the jury, as follows:

"Dear Doctor Blair:

Your communication of January 27, 1938, has been received. The important subject matter will be given prompt consideration.

Very truly yours, C. B. Conklin, M. D., Secretary.

cc—Dr. J. Ogle Warfield, Jr., Chairman, Hospital Committee."

Gov. Ex. 77, Dr. Conklin's letter to Dr. J. Ogle Warfield, Chairman of the Hospital Committee, dated January 29, 1938, was received in evidence, and read to the jury, as follows:

"DEAR DOCTOR WARFIELD:

I am enclosing herewith correspondence which is self-explanatory, for such action as your committee may deem proper.

Very truly yours, C. B. Conklin, M. D., Secretary.
cc—Dr. Thomas E. Neill, President."

Gov. Ex. 528, letter from Dr. Conklin, Secretary of the District Medical Society, to Washington Sanitarium, dated July 29, 1937, was received in evidence, and read to the jury, as follows:

"DEAR DOCTOR:

It may have come to your attention that there is an organization or organizations that are interested in gaining medical personnel. Your attention is called to Chapter IX, Article IV, Section 5 of the Constitution, quoted in full.

You are particularly urged to submit to the Compensation, Contract and Industrial Medicine Committee, pursuant to the Constitution, any or all contracts, written or verbal, under which you may contemplate giving your services.

Very truly yours,"

Gov. Ex. 529 was received in evidence and described to the jury as a letter from Dr. Conklin, Secretary of the Medical Society of the District of Columbia, dated July 29, 1937, enclosing the approved list, but not read.

Gov. Ex. 451, Mr. Kirkpatrick's letter to Mr. Rice, Credit Manager, Washington Sanitarium & Hospital, dated February 4, 1938, was received in evidence, and read to the jury, as follows:

"DEAR MR. RICE:

There is enclosed herewith an application executed by Dr. Raymond E. Selders, a surgeon on the staff of Group Health Association, Inc., for appointment to the staff of Washington Sanitarium and Hospital.

It will be very much appreciated if this application may be presented to the proper body and advise us of such action as may be taken. Your prompt attention to this matter will be appreciated."

Gov. Ex. 452, letter from Robert A. Hare, M. D., from Washington Sanitarium to Mr. W. C. Kirkpatrick, President, Group Health Association, dated February 8, 1938, was received in evidence, and read to the jury, as follows:

"My dear Mr. Kirkpatrick:

Your letter of February 4 accompanied by an application from Dr. Raymond E. Selders for appointment on the staff of the Washington Sanitarium and Hospital, has been received.

This application will have consideration at an early date and we will notify you of the action taken promptly."

Gov. Ex. 453, letter from Dr. Hare, Washington Sanitarium, to Mr. W. C. Kirkpatrick, Group Health Association, dated February 14, 1938, was received in evidence, and read to the jury, as follows:

"My dear Mr. Kirkpatrick:

In harmony with my recent communication I will state that our Board has considered the application of Dr. Raymond E. Selders which has come to us through your hands.

In view of the fact that there are some problems existing between health groups and physicians, it was voted that the application be tabled, without prejudice, until your organization is recognized or approved by the American Medical Association or its local units. When a suitable plan is worked out in this line of endeavor we will be glad to consider this subject with you again. In the meantime, I am

Very truly yours,"

Gov. Ex. 455, copy of letter from Mr. Kirkpatrick to Robert A. Hare, Washington Sanitarium, dated July 29, 1938, was received in evidence, and read to the jury, as follows:

"My dear Doctor Hare:

In view of Justice Bailey's decision yesterday establishing the legality of Group Health Association, Inc., it is

respectfully requested that Dr. Raymond E. Selders, a member of our staff, be admitted to the courtesy staff of Washington Sanitarium and Hospital, and that he may attend members of this Association admitted as patients there.

We shall appreciate the courtesy of an early reply.

Very truly yours,"

Gov. Ex. 456, letter from Dr. Hare to Mr. Kirkpatrick, dated August 8, 1938, was received in evidence, and read to the jury, as follows:

"My Dear Mr. Kirkpatrick:

Your letter of July 28 has been received. Would state that the question you raise will have consideration in due course.

Sincerely, Robert A. Hare, M. D., Medical Director."

Gov. Ex. 457, Mr. Kirkpatrick's letter to Dr. Hare, dated September 16, 1938, was received in evidence, and read to the jury, as follows:

"Dear Dr. Hare:

On August 8, 1938, you advised me that the application of Dr. Raymond E. Selders for admission to the Courtesy Staff of your hospital, which was the subject matter of my letter of July 28, 1938, would have consideration in due course.

I shall appreciate it very much if I may have some advice from you as to what action that may have been taken in the meantime.

Very truly yours,"

Mr. Lewin: May it please the court, I think, in order to make the record clear, I should restate the Government's offer in evidence of those portions of the minutes of the District Medical Society and its executive committee and the documents referred to in and attached to the minutes. I refer, of course, only to those minutes which were identified as such by the defendant Wiprud, and I refer to all of them except the minutes of the Society for January 6, 1937, and March 3, 1937, no portions of which are offered as yet.

The Government's offer includes, and only includes, those portions of the minutes which show the attendance, the fact of participation of all persons present at the meeting, and those portions which show the approval of the minutes of any prior meetings, and all of the portions of the minutes which were read to the jury by Government counsel, whether marked as hereinafter indicated or not, and all portions of those minutes or other papers attached thereto which have been marked with colored crayon in photostatic copies of the minutes; the said photostatic copies of these minutes as bearing these markings being likewise offered merely for the purpose of identifying these portions. All of this evidence was offered and received, as I understand it, against all of the defendants as against whom the court has determined or may determine that a prima facie case as charged in the indictment has been established, either by this evidence or by any other evidence offered or to be offered by the Government in this case.

The Court: If you will pass me a copy of that I will reread it.

(Mr. Lewin handed a memorandum to the court.)

Mr. Lewin: The purpose of offering the photostatic copies, of course, is so that we can avoid marking up the original minutes that belong to the Society.

The Court: Yes, I am assuming that is the purpose. You may proceed.

Dr. Walter Arthur Coole, a witness for the United States.

Direct examination.

By Mr. Allen:

From October 30, 1937 to November 23, 1938 I was Secretary of the Harris County Medical Society. The President of the Harris County Medical Society received a copy of Gov. Ex. 73-A and it came to the Society's attention. I recognize Dr. Holman Taylor's signature on Gov. Ex. 537. I received Gov. Ex. 538. I wrote Gov. Ex. 539. Dr. Talley is chairman of the Board of Censors of the Harris County Medical Society. Dr. Talley's signature appears

on Gov. Ex. 81. Dr. Talley's signature appears on Gov. Ex. 540. I am familiar with Dr. Selders' signature and it appears on Gov. Ex. 541. Gov. Ex. 124 bears Dr. Talley's signature. Gov. Ex. 542 bears Dr. Taylor's signature.

I did not write Gov. Ex. 543 nor did I authorize anyone to sign my signature. It does bear the signatures of Drs. Talley, Foster and Warner. Dr. Selders' signature appears on Gov. Ex. 544. I wrote Gov. Ex. 545. Gov. Ex. 546 bears Dr. Selders' signature. I produced Gov. Ex. 547 in response to a subpoena. I wrote Gov. Ex. 127. I received Gov. Ex. 126 in reply to Gov. Ex. 127. Gov. Ex. 548 bears Dr. Talley's signature. I wrote Gov. Ex. 549. I wrote Gov. Ex. 550. I wrote Gov. Ex. 551. I received from Dr. Selders Gov. Ex. 552. I wrote Gov. Ex. 553. I received from Dr. Selders Gov. Ex. 554. I wrote Gov. Ex. 555. In the regular course of business the Harris County Medical Society kept minutes. I was designated to keep those minutes in 1938. The minutes usually were typed up within a week after the meeting. I prepared and kept Gov. Ex. 556. Gov. Ex. 557, a report of the board of censors dated January 26, 1938, was submitted to the Society and retained as a part of the minutes. Gov. Ex. 558 is the minutes of the regular meeting of the Harris County Medical Society held on March 30, 1938. Gov. Ex. 559, attached to these minutes, is dated March 30, 1938 and is signed by Dr. Talley. Gov. Ex. 560 is the minutes of the regular business meeting of the Harris County Medical Society of April 27, 1938. Gov. Ex. 561 is the minutes of a business meeting of the Harris County Medical Society held on September 14, 1938; Gov. Ex. 562 is the minutes of a business meeting of October 26, 1938. Gov. Ex. 563 is the minutes of a special business meeting of the Harris County Medical Society held on November 23, 1938. Gov. Ex. 564 is the minutes of the regular business meeting held on November 30, 1938. Gov. Ex. 565 is the report of the board of censors of the Harris County Medical Society dated November 22, 1938 and is a part of the minutes.

Cross-examination.

By Mr. Leahy:

The only signature I can identify on Gov. Ex. 537 is that of Dr. Taylor. The pencil writing on Gov. Ex. 538 is mine. I cannot identify the signature on Gov. Ex. 542. I have

never seen Dr. Raymond E. Selders write. On Gov. Ex. 543 I cannot identify the signature on the first sheet but I can identify the signatures on the second. I don't remember the original of Gov. Ex. 126 and do not know where the carbon came from. I sent Gov. Ex. 549. I have been a member of the Harris County Medical Society since 1931. The Society was founded in 1892. Under the rules of the Society I was authorized to keep the minutes. I write shorthand and took the minutes down to the best of my ability and within a week wrote them up. The Board of Censors in 1938 were Dr. Talley, Dr. Smith and Dr. Warner. The Board of Censors investigate the conduct of members reported to it. The minutes identified on direct examination were all prepared by me. Dr. Selders was a member of the Harris County Medical Society and is still a member of that Society.

Redirect examination.

By Mr. Allen:

I received Gov. Ex. 566. Gov. Ex. 126 is a copy of No. 566. The exhibits numbered Gov. Ex. 537 and 542 were not received by the Harris County Medical Society but were obtained by me from Dr. Taylor as certified copies of the originals.

Recross-examination.

I have never seen the originals of Gov. Ex. 537 and 542. I don't know the notary public whose name appears on the bottom of these exhibits and cannot identify them.

Redirect examination.

I produced these documents under subpoena as being the best evidence available as to the originals called for by the subpoena.

George B. Trible, a witness for the United States.

Direct examination.

By Mr. Lewin:

I am a practicing physician in Washington and was so practicing in 1937 and 1938. I specialize in otolaryngol-

ogy, that is, ear, nose and throat. In November, 1937 I operated on a boy, Lewey Gilstrap. I was called in to see the case and found that the parents were members of Group Health. There was no specialist in their group, so that the case had been referred to me. I did an immediate operation consisting of opening the ear drum. The case was taken to Children's Hospital. The patient was X-rayed by Dr. Bierman,. which confirmed the diagnosis of an acute mastoiditis. Dr. Macon and Dr. Cohen and nurses were in attendance during the operation and in its course Dr. Scandiffio came in. The patient was taken by me as a private patient. In this case the patient had acute mastoiditis, with an abscess around the big vessel that goes beneath the mastoid bone. The patient made a perfect recovery. I sent my bill to the patient's father and received a check from Group Health. I know Dr. Henry Brown, Medical Director of Group Health, and have been his personal friend for many years, I made a report on the Gilstrap case to Dr. Brown, and identify Gov. Ex. 567 as a copy of the report I gave to Dr. Brown. At the time of the operation I was a member of the District Medical Society and the A. M. A. and was before that time and have been continuously since. I received from Dr. Hooe, Chairman of the Compensation, Contract and Industrial Medicine Committee of the District Medical Society Gov. Ex. 568.

Gov. Ex. 568 received in evidence and read to the jury as follows:

May 14, 1938

"Dr. George B. Trible
1801 I St., N. W.
Washington, D. C.

DEAR DR. TRIBLE:

You are hereby directed to appear before the Compensation, Contract and Industrial Medicine Committee at the Medical Society Building, 1718 M St., N. W., on Tuesday evening, May 17, 1938 at 8 p.m.

Very truly yours, R. Arthur Hooe, M. D., Chairman of the C. C. & I. M. Committee."

To prepare myself for the committee meeting I secured a statement from the parents of the patient and from Dr.

Brown regarding the case. Gov. Ex. 569 dated May 16, 1937, is a statement of Mr. Lewey O. Gilstrap. Gov. Ex. 570, dated May 15, 1937, is a statement of Dr. Brown. I took these statements, being Gov. Exs. 569 and 570, as well as Gov. Ex. 567, and submitted them to the committee, which considered them. The meeting was very short and very informal, with Dr. Hooe, Chairman, Dr. Fred Sanderson, Dr. Paul S. Putski, Dr. Greear, and Dr. Nicholson in attendance.

Gov. Exs. 567, 569 and 570 were offered in evidence. The defendants objected on grounds of incompetency, immateriality, irrelevancy and hearsay. Objections overruled and an exception noted.

Gov. Ex. 567 was received in evidence and read to the jury as follows:

December 20, 1937

"Dr. Henry R. Brown
Group Health Ass.
1328 Eye St., N. W.
City

DEAR DR. BROWN:

Complying with your request for information regarding Lewey Gilstrap, whose father is a subscriber of the G. H. A. and as such is entitled to treatment for his family by the Association, but who was seen by me on several occasions and operated at Children's Hospital as a private patient. He was seen at home on November 22, 23, and 24, a paracentesis being performed on November 23 at the home. This case presented a great many difficulties of diagnosis. The child was very patently sick. He had given a history of previous trouble, which had necessitated several days hospitalization last year. He suffers from enlarged tonsils and adenoids, both evidently infected. He was directed to be brought to this office on November 24, at which time an X-ray was taken by Dr. H. I. Bierman, a copy of which report is enclosed. He was operated on at Children's Hospital on November 25, disclosing a large mastoid abscess which had perforated outer cortex of the mastoid and which corresponded to the painful spot which had been a marked symptom throughout. Cultures from the pus, made in the Children's Hospital laboratory, showed strep hemolytious. The child made a very good recovery, was

discharged from the hospital in about a week, and comes into this office every other day for treatment.

Sincerely, G. H. Trible."

Gov. Ex. 569 was received in evidence and read to the jury as follows:

"Affidavit

DISTRICT OF COLUMBIA,
City of Washington:

Lewey O. Gilstrap, of lawful age, being first duly sworn on oath deposes and says: That to the best of his knowledge he is now a member, in good standing, of Group Health, Inc., Washington, D. C., and that he was such member at all times hereinafter mentioned.

That on the 24th day of November, 1937, it was discovered by doctors in the said Group Health that Lewey O. Gilstrap, Jr., son of affiant, was suffering from mastoiditis; that said Group Health, at that time, had no doctor on its staff who specialized in such cases, and it had no facilities to care for such cases, and affiant was advised by said doctors that it would be necessary to obtain a competent physician in private practice in Washington to attend to the case.

That affiant, having confidence in the ability of Dr. G. B. Trible in such cases, took his son to the office of said Dr. Trible on the evening of November 24, 1937 and asked for his advice in the case. That Dr. Trible examined the boy and advised the placing of the boy in the hospital at once, and on the next morning, and on November 25, 1937 Dr. Trible performed a mastoid operation on the boy, which operation was entirely satisfactory.

That from the time affiant took said boy to the office of Dr. Trible, the said doctor considered him a private patient, and was looking to affiant for payment of his fees, and affiant agreed to be responsible for said fees.

Witness my hand this 16th day of May, 1938. Lewey O. Gilstrap. Subscribed and sworn to before me this 16th day of May, 1938. Anthony De Poto, Notary Public."

After the meeting the papers left by me were returned by Dr. Hooe in person, at which time I had a conversation with Dr. Hooe, as follows:

Q. First, do you remember exactly what was said there in every detail?

A. Yes, in every detail. It made quite an impression on me. So I said, "That is fine"; I looked them over. He said, "Well, I am resigning from the chairmanship of that committee". He stated, "You will have to appear before the executive committee." I was a little surprised at that. I hadn't paid any attention to it. I thought it was just a matter of form, of no consequence; I didn't take it seriously. So he said, "You have done wrong" and he said, "If I could see things as he did, and when the time came, to come to him, then I could go to sleep soundly." I didn't have any trouble about sleeping; I didn't think I had done anything to be worried about. We had a long harangue there in my office. I don't recall it in detail. He asked me about Dr. Brown and I told him that I had known Dr. Brown for a great many years; that "he is a very fine fellow". He said, "yes, so was Dillinger; he was a fine fellow too." It continued to get a little more exciting there. He got up and he said, "Well, you will have to be more careful about this society." He said, "The Medical Society",—I don't know, should I repeat what he said?

Mr. Lewin: Well, characterize it; was it some vulgarity?

The Witness: Yes, it was some vulgarity; "That the members of the Society were S.O.B.'s. That they are not fit to lace your shoes, but they will pass judgment on you."

I didn't feel that way about it. I hadn't done any wrong.

Q. What physical appearance did he manifest on that occasion, while he was talking to you?

A. He was walking around, back and forth; excited; I thought he was going to have a stroke.

Q. What was the pitch of his voice?

A. It raised to a crescendo.

This meeting with Dr. Hooe so impressed me that immediately upon his leaving I took a prescription pad and jotted down notes of what transpired. On this occasion Dr. Hooe brought to me Gov. Ex. 571.

Gov. Ex. 571 was received in evidence and read to the jury as follows:

"The Committee hereby charges you with having violated Section 2 of Article 3 of Chapter 9 of the Constitution of

the Medical Society of the District of Columbia, reading as follows:

"'Every member of the Society before entering into a contract or agreement for rendering professional service shall submit a copy of his contract, if written, or a true declaration of the terms of the agreement, in writing, to the Committee on Compensation, Contract and Industrial Medicine for approval. In the event that the committee disapproves the contract, a member may appeal to the Executive Committee.'

"And again Chapter 9, Article 4, Section 5, as follows:

"'No member of the Society shall engage in any professional capacity whatsoever with any organization, group or individual, by whatever name called or however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, which has not been approved by the Society.

"'The Executive Committee is authorized and directed to prepare an approved list of organizations, groups and individuals, by whatever name called and however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, and the same shall be kept in the office of the Secretary-Treasurer. Before any such organization, group or individual can be placed on the approved list of the Society, such organization, group or individual, or the member of the Society proposing professional relations therewith, shall submit to the Compensation, Contract and Industrial Medicine Committee such evidence as the Committee or the Society may require showing the character, activities, financial condition and ethical standards of said organization, group or individual, and after considering the same, said committee shall make a report of its investigation and findings to the Executive Committee for such action as it may deem necessary.

R. Arthur Hooe, M. D. Chairman, Compensation, Contract and Industrial Medicine Committee."

I later received a letter from Dr. C. B. Conklin on the letterhead of the Medical Society, Gov. Ex. 572.

Gov. Ex. 572 was received in evidence and read to jury as follows:

"May 31, 1938

DEAR DR. TRIBLE:

You are hereby directed to appear before a meeting of the Executive Committee, on Monday evening, June 6, 1938, in the Medical Society Building, at 8 p.m.

Very truly yours, C. B. Conklin, M. D., Secretary."

I obtained statements from Dr. Bierman, Dr. Cohen and the nurse who posted the operation, which I turned over to the Executive Committee. These are Gov. Exs. 573, 574, 575, and 576. These four statements were sent to the Executive Committee with a letter from me, Gov. Ex. 52. After the date of the hearing I received a communication from Dr. Sprigg, the then chairman of the Executive Committee, stating in substance, "Don't do it again," to which I replied, "Your letter received and contents noted. Evil be to him who evil thinks."

The Government then offered in evidence Gov. Exs. Nos. 573, 574, 575, 576, and 52, which were objected to by the defendants on the ground that they were incompetent, irrelevant, and immaterial. This objection was overruled and an exception noted.

Gov. Ex. 573 was received in evidence, and read to the jury, as follows:

"May 21, 1938

DEAR DR. TRIBLE:

Replying to your note regarding the Gilstrap case and the request that you appear before the Committee, I want to say that I went to see Dr. Hooe about this matter. I went to see him because I could not understand how anything could have been considered unethical in regard to our conduct in this case.

I told Dr. Hooe that I had heard you were being questioned about the Gilstrap case and that if you were guilty I was also. I explained to him that you had told me in advance of my X-raying the patient that though the patient had originally been treated at the Group Health he was now a private case and that he would be handled as such, and that I was to send my bill directly to the patient as in all private cases.

Dr. Hooe reacted rather violently to my insistence that I could also be guilty, saying that the patient was referred to

me by a private physician. He would not listen to my statement that I knew in advance that the patient had originally been treated at the Group Health and had been sent to you. His apparent inconsistency and vehement denial of any possibility of my also being guilty seems rather strange to me. I do not understand what is back of the whole matter, but I cannot see where one person could be guilty and another not guilty in exactly the same case when each one acted according to the accepted rules of the Society. It was impossible for me to argue with Dr. Hooe because of his very emphatic stand in the matter.

Is it possible that there may be a personal matter back of the whole affair? The next day after I spoke to Dr. Hooe I met him on the stairs in this building coming from the third floor. I asked him whether he had been to see you in regard to the case and he said he had NOT. Later, when I spoke to you, I heard that he HAD been in to see you. I can't understand why he denied having just seen you or why he should make personal visits to a defendant outside of any regularly scheduled hearing and apparently without the knowledge of the remainder of his committee. If I can be of any assistance before the Committee, please feel free to call upon me.

With best wishes, I remain, Sincerely, M. I. Bierman."

Gov. Ex. 574 was received in evidence, and read to the jury, as follows:

"May 23, 1938

DEAR DR. TRIBLE:

In reply to your request for my knowledge of the Gilstrap case let me say first that I am, as you know, opposed to any dealings with Group Health Association or any similar association. I approve of the present policy of the Medical Society in their endeavor to control its member for the good of the Medical Profession and the public.

As far as this particular case in concerned, the simple facts are that before this operation for mastoiditis you frankly stated that it had been a G. H. A. case and was now your private case. I did not then and I do not now see any reason why you could not under these circumstances treat the case.

The investigation itself was conducted in a manner to arouse one's antagonism. On Friday, May 13, 1938, I re-

ceived a telephone message to call a certain number but the individual would not leave his name. To this call I paid no attention. Later he called again and left his name stating that 'I can save the Doctor some trouble if he gets in touch with him.' On getting in touch with Dr. Hooe he stated that he wanted to see me. When I asked him the nature of the business he stated that he could not discuss it over the telephone. I told him I would try and see him but that I was busy at the moment. He then said that 'he would leave it like this, that if I did not see him before noon Monday I would have to appear before a committee Tuesday evening.' As I had no reason not to appear before the committee and as this sounded like a threat I did appear before the committee. Up to that time I did not know the reason I was to appear before them. As Chairman of the Committee Dr. Hooe then told me that in view of your testimony he had no questions to ask me. Another member of the committee then asked me if I had ever received a check from the G. H. A.

I hope this letter may clarify your association with this case and the frank way in which you dealt with it and all other matters in which it has been my pleasure to be connected.

Sincerely yours, Edward B. Macon."

Gov. Ex. 575 was received in evidence, and read to the jury, as follows:

"DEAR DR. TRIBLE:

In so far as I know the Gilstrap child came to us as your semi-private case, and was handled the same as your other cases.

Sincerely yours, Mary O'Sullivan."

Gov. Ex. 576 was received in evidence, and read to the jury as follows:

"MY DEAR DR. TRIBLE:

I recall assisting you do a mastoid operation on or about November 25, 1937, at Children's Hospital. I can not recall the name of the patient, though I understand now that his name was 'Gilstrap.' During the operation I heard you say in effect that the patient was originally a member of the Group Health Association and that you had seen him

through Dr. Scandiffio. You stated that at first you had not wanted to take this case, but that you had finally agreed to accept him as a private patient of your own because the nature of the illness was so acute as to require immediate operation.

Dr. Scandiffio was present for a short while after the operation had gotten under way.

Truly yours, A. Cohen, M. D."

Gov. Ex. 52 was received in evidence, and read to the jury, as follows:

"My Dear Doctor Conklin:

It is a source of regret that I am unable to appear personally Monday night, but inasmuch as there has been, to my mind, no offense, no defense is contemplated. The facts relative to the G. H. A. are as follows:

The former Medical Director, Doctor Brown, and I have been friends for years. I have treated him and his family and naturally, when he accepted the position as head of that organization, he asked me if I would consider a consultantship. I replied that if, and only if it were acceptable to the laws of the District and the by-laws of the Medical Society. He said he felt it was and wanted to cooperate and act under such laws, but seeing how I felt, he let the matter drop. I have not even seen his clinic.

The Torch Club here asked me to present the organized medicine side of a debate. I told Mr. Elwood Street that I would be glad to help, but I was no speaker and suggested Dr. Christie, Dr. McGovern and Dr. Bennett. Then they thought it would be a good idea to have G. H. A. represented, so I asked Dr. Brown. He did not get in for dinner and for only a part of the debate and declined to speak. Dr. Christie and Dr. Bennett spoke and made a good impression on a hostile audience. I was warned after that, by two of my associates, that I was under suspicion and would be in trouble being seen with Doctor Brown. Inasmuch as he is a doctor, a gentleman and a friend, I have felt it a matter of personal privilege and not a regulatory affair.

With a number of constituents ranging from 1500 paying members up to 2500, and their dependents, all multiplied by three, there naturally arose many cases in all fields. Knowing my attitude in this matter, they purposely were not referred to me. During all this time, to the best of my knowl-

edge, two surgical cases came to me, one the case in question and the other an antrum case operated at Garfield also as a private patient, but who stated she was eligible for clinic and treatment and thought they should settle her bill. A dentist named Cling was also in this case. She found she was not eligible for treatment and personally paid her bill, as I told her I expected. She made two payments, one of $100 and one of $75. At the time she was operated on, I told the anesthetist her claim, but that I had no connection with nor accepted any responsibility from that organization and looked to her personally for payment. She was also X-rayed by Dr. Bierman and treated just as any other case. She has left her job and cannot be contacted. Several patients among my clientele at different times told me they were eligible for treatment, but I sent them all bills which they paid.

Reverting to the Gilstrap case, there was no connection with the G. H. A. and the patient was handled as any other, arrangement made from the office for it, as is always done. I mailed the bills to the patient regularly, not discounted, but based on the Mayo plan, the same as all other major operations. Later, after several months, it was paid from the G. H. A. There was no rule at that time that such checks should not be accepted. They were so accepted by many members of the society, though I have been told by two, who had similar cases, that they called the committee before accepting them. Referring to the by-law regarding an individual not on the accepted list, I note that both you, Mr. Secretary, and I, treated Dr. Penhallow's children and I understand this rule was put in to prevent his contact with members of the District Society. It is remarkable that I have never got any pay cases from him or his clinic. Evidently they are treated by other specialists.

Then I was called before the committee. I had only a half hour. I simply told them, as I said, that I felt I needed no defense, nor do I feel so now, and went away.

Referring to the case at Childrens Hospital, Dr. Scandiffio called me regarding this case and requested permission to be present at the operation and was present for a short time about the middle of the surgical procedure. He was at that time a member of the District of Columbia Medical Society.

With reference to the claim by the chairman of the Committee on Contracts, etc., who stated that the letter in re-

sponse to a request from Doctor Brown constituted a validity to the charge, I was cooperating with them, I think the rule was that phone calls or letters reporting on such cases were permissible to other than members of the Society, but personal consultations were not. I considered this request the same as from an insurance company and so replied. I replied by letter rather than by phone so that a record could be kept. It stated clearly that this was a private case.

The chairman of the contracts committee brought back the papers I had submitted, made a long harangue in my office, about which I immediately jotted down notes, and ended by saying if I could see things as he did, and when the time came, to come to him, then I could go to sleep soundly. I was also told that the Society was full of s. o. b.'s and a s, but they would sit in judgment on me, though they were not worthy to lace my shoes. I told him I did not feel that way about them and a difference of opinion was understandable.

Now there is no defense for there is no offense that I can see. I am submitting herewith certain papers to be presented for the committee. If there be any offense I am sorry and accept full responsibility, for in the case of the X-ray man and the anesthetists, I told them the circumstances and felt these were private patients, and they felt as I.

I have deep regard for the Society and live up to its rules. I resigned as a Commander in the Medical Corps of the Navy and threw my lot with you. I know state controlled medicine as but few do, and I realize its good points and its bad ones. The men in the military services are high-class men and I have always stood up for them, so much so I am called 'The Admiral' in some ridicule. It is a bad bird that soils its own nest. I stand for the District now as I stood for them and I regret if in any way I have been at fault. I do resent and have resented any infringement on personal social contacts and so do you. If there are any points I can elucidate further I will be glad to do so, but no defense is being submitted, for the facts are as I state them and I will be glad to have this passed upon by the judiciary council of the A. M. A.

In passing, you will note that the famous Gilstrap case was treated in semi-private accommodations and kept in the hospital a minimum of time following the mastoidectomy. This should point conclusively to the truth, which is that

he wished the expenses cut down to the minimum as he fully expected to bear them himself.

Very sincerely, G. B. Trible."

Gov. Ex. 37 read from to the jury as follows: "Minutes of the meeting of the Executive Committee of the Medical Society held June 6, 1938."

"First is the letter from Dr. Hooe to the chairman of the executive committee of the District Medical Society, who was Dr. Sprigg, dated May 18, 1938. It reads:

'DEAR DOCTOR SPRIGG:

A letter addressed to Dr. George B. Trible, under date of May 14, 1938, and sent by registered mail, follows:'

And then he quotes the first letter, which has already been read to the jury. Then the following appears:

'Accordingly upon convening Dr. Trible was presented with the following charges, in writing:'

And then follows that letter, Gov. Ex. 571.

'Please find herewith attached complete transcript of the proceedings together with a true copy of a business card filed in the office at Children's Hospital.

In view of the evidence as therein set forth and in particular consideration of the correspondence therein contained as having occurred between Dr. George B. Trible and Dr. Henry Rolf Brown, Medical Director of Group Health Association, Inc., we desire to submit to your committee our verdict of guilty as charged, (possibly unwittingly), with the recommendation that such disciplinary measure be in turn recommended to the Medical Society as may seem commensurate with the gravity of the offense.

Respectfully submitted, (Signed) R. Arthur Hooe, M. D., Chairman, Compensation, Contract and Industrial Medicine Committee.'

'The complaint against Dr. George B. Trible was taken up at this point.

'Dr. Sprigg, chairman, presiding, there were present:

'Drs. A. B. Bennett, Daniel L. Borden, C. N. Chipman, Harry Lee Claud, A. C. Gray, Raymond T. Holden, Jr., Thomas E. Neill, John A. Reed, E. Hiram Reede, Sterling Ruffin, and Mr. Theodore Wiprud, Executive Secretary.

'The minutes of the preceding meeting of April 25 were read and approved.

'Dr. Sprigg then introduced the new Executive Secretary to the Committee. He also introduced Dr. Fred R. Sanderson, representing the Compensation, Contract and Industrial Medicine Committee. The Chairman, Dr. Sprigg, said, was unable to attend.

'The executive secretary then read a letter from Dr. R. Arthur Hooe, Chairman of the Compensation, Contract and Industrial Medicine Committee, and the transcript of the hearing held by the Committee in connection with charges made against Dr. George B. Trible.

'The Chairman stated that Dr. Edith SeVille Coale wished to be heard, and suggested that the complaint against Dr. Trible receive attention later in the meeting. This was agreeable to the Committee.'

. . . . . .

'Dr. Sprigg made a brief statement setting forth his views on the behavior of the Doctor.

'Dr. C. N. Chipman reported that Dr. Macon was waiting to be heard.

'The Chairman was rather surprised and said he did not know that either Dr. E. B. Macon or Dr. George B. Trible had been invited to attend.

'Dr. E. B. Macon was invited into the meeting and informed by the Chairman that an error had been made and that the Committee did not desire to hear him. The Chairman apologized for causing him inconvenience.

'Some discussion then followed as to the letter Dr. Macon had received from Dr. C. B. Conklin, informing him that he was to be on hand. This letter was circulated among the Committee.

'Upon Dr. Macon's retirement further discussion was held.

'Motion made by Dr. E. Hiram Reede that the letter directed to Dr. Macon be placed in the record of these minutes and that Dr. Sprigg's comments also be included. Motion seconded by Dr. Holden and carried.

'There followed a discussion as to the advisability of inviting Dr. Trible to a special meeting to be called by the Executive Committee for the purpose of hearing him.

'Dr. A. B. Bennett then stated that he had a letter from Dr. Trible, directed to the Secretary of the Society, also original letters in connection with the complaint which Dr. Trible wished returned to him.

'Dr. Sprigg did not think that this material should be introduced at this meeting. However, committee members were not in agreement on this matter.

'Motion made by Dr. John A. Reed that the letter directed to the Secretary by Dr. George B. Trible be read. Motion seconded by Dr. Holden and carried.

'Dr. F. X. McGovern requested the privilege of the floor and commented briefly on the letter received from the Compensation, Contract and Industrial Medicine Committee, in which the committee had found Dr. Trible guilty of unethical conduct. He said that the Committee was out of order in passing judgment; that it was merely a fact-finding committee.

'Dr. Trible's letter was read following which there was considerable discussion.

'Motion made by Dr. Holden that the Executive Committee finds Dr. Trible's explanation adequate and his assurance that he will not in any way knowingly violate the ethics of the profession or the Constitution and by-laws of the Medical Society in the future satisfactory. For this reason it is their decision that the matter be carried no further; and that Dr. Trible be informed of the Committee's action. Motion seconded by Dr. Chipman and carried.

'There followed a discussion as to whether or not a physician who treats a patient who is a member of the Group Health Association, Inc., as a private case, but accepts payment from the Group Health Association, is guilty of unethical conduct.

'Dr. Sprigg, in a statement based on the information given him by the Society's attorneys, stated that under these circumstances he would be guilty.

'This was denied by Dr. C. N. Chipman who said that the Executive Committee already had gone on record in resolution, stating that such a relationship was not unethical.

'Dr. F. X. McGovern reviewed the past efforts of himself and his Committee to have the Society take a definite stand on the Group Health Association, making its position clear; that so far he had not been successful in getting the Society to act.' "

Cross-examination.

By Mr. Leahy:

The letter I received from Dr. Sprigg I threw away. After the first informal meeting I was advised by Dr. Hooe

that the charges were sent on to the Executive Committee. I never appeared before that Committee but merely turned my letters over to them and they found everything was all right and that was all there was to it.

ELEANOR HALL, a witness for the United States.

Direct examination.

By Mr. Allen:

I am a clerk in the record room of the Eastern Dispensary and Hospital. I have held that position for four and one-half years. Gov. Ex. 579 is a copy of the rules and regulations of the Medical Staff in operation at that hospital from January 1, 1937, to December 20, 1938. The handwriting on the questionnaire, marked Gov. Ex. 309, is that of Dr. J. Rogers Young.

Cross-examination.

By Mr. Leahy:

The rules and regulations (Gov. Ex. 579) in force in 1937 were in force in 1938, and are still in force. Dr. J. Rogers Young is Chief of Staff at Casualty and he is in the city now.

ANNA MARY DENNINGER, a witness for the United States.

Direct examination.

By Mr. Kelleher:

I have been employed by Dr. Mann for eleven years. The handwriting on Gov. Ex. 300 and 301 is that of Dr. Mann.

Gov. Exs. 309, 310, 300, 301, and 579 were offered in evidence. These exhibits were objected to on the ground they were incompetent, irrelevant, and immaterial, as no conspiracy had been shown to exist, and that the proof failed to show that Casualty Hospital and Sibley Hospital were parties to any conspiracy and hearsay. These objections were overruled and exception was allowed.

Gov. Exs. 309 and 310 were received in evidence and read to the jury as follows:

Mr. Kelleher: Exhibits 309 and 310, is the questionnaire with the name "Casualty" at the top, and it has been identified as having been written by Dr. Young, the defendant, chief of staff of Casualty Hospital.

"Questionnaire.

1. What communication or inquiry has your hospital had from Group Health Association, Inc.?
None.

2. What reply has your hospital made to Group Health Association, Inc.?
None.

3. Which, if any of the following Doctors are now members of your Medical Staff in any capacity or have privileges to practice in your hospital? Dr. Henry Rolf Brown, Dr. Allen E. Lee, Dr. Mario Scandiffio, Dr. R. Stephen Hulburt, Dr. Raymond E. Selders, Dr. Edmond D. Wells.
None.

4. Is your hospital in sympathy with the policies of the Medical Society of D. C.?
Yes.

5. Is the entire Medical Staff of your hospital reappointed annually?
Yes.

6. Are appointments to the Medical Staff of your hospital approved by the Medical Staff?
Yes.

7. What governing body of your hospital finally makes appointments to the Medical Staff?
Lay Board.

8. Does your hospital require membership in the Medical Society of D. C. as a qualification for appointments to its Medical Staff?
Applicant must be qualified for membership in local Society.

9. What percentage of the entire medical staff of your hospital are members of the Medical Society of D. C.?

10. Does your hospital require membership in the A.M.A. as a qualification for appointment to its Medical Staff?
See No. 8.

11. What percentage of the entire Medical Staff of your hospital are members of the A. M. A.?

12. Is your hospital a beneficiary of Community Chest funds?
No.

13. Will you kindly make any other inquiry that you think might be pertinent at this time?"

Mr. Kelleher: Exhibit 579 has been identified as the by-laws of Eastern Dispensary and Casualty Hospital. The Government has offered in evidence Article 2, Section 1, which reads as follows:

"Article 2, membership.
Section 1—Qualification
The applicant for membership shall be a graduate of a recognized medical school, legally licensed to practice in the District of Columbia, qualified for membership in the Medical Society of the District of Columbia."

Mr. Kelleher: Gov. Exs. 300 and 301 is the questionnaire with the word "Sibley" at the top. The answers have been identified as having been made by Dr. Jesse T. Mann.

"Questionnaire.
1. What communication has your hospital had from Group Health Association, Inc.?
Asking to admit pt. and those pt. be treated by Dr. Selders.
2. What reply has your hospital made to Group Health Association, Inc.?
Non-committal reply.
3. Which, if any of the following doctors are now members of your Medical Staff in any capacity or have privileges to practice in your hospital?
Dr. Henry Rolf Brown—Yes
Dr. Allen E. Lee—Yes
Dr. R. Stephen Hulburt
Dr. Raymond E. Selders
Dr. Edmond D. Wells.

4. Is your hospital in sympathy with the policies of the Medical Society of D. C.?

Yes.

5. Is the entire Medical Staff of your hospital reappointed annually?

No.—Only 25 members of the Medical Council.

6. Are appointments to the Medical Staff of your hospital approved by the Medical Staff?

Approved by Medical Council.

7. What governing body of your hospital finally makes appointments to the Medical Staff?

Recommended by Medical Council and appointed by Board of Directors.

8. Does your hospital require membership in the Medical Society of D. C. as a qualification for appointments to its Medical Staff?

No.

9. What percentage of the entire medical staff of your hospital are members of the Medical Society of D. C.?

Majority–about 80%.

10. Does your hospital require membership in the A. M. A. as a qualification for appointment to its Medical Staff?

No.

11. What percentage of the entire Medical Staff of your hospital are members of the A.M.A.?

About 80%.

12. Is your hospital a beneficiary of Community Chest funds?

No.

13. Will you kindly make any other inquiry that you think might be pertinent at this time?"

Gov. Ex. 521 was received in evidence and read to the jury as follows: "Minutes of the regular meeting of the Board of Directors of the Children's Hospital of the District of Columbia of November 15, 1937."

"Mr. Drayton read a letter from the Group Health Association with regard to permitting their physicians the courtesy staff of the Hospital—they not being members of our Staff. Mr. Drayton also read a proposed letter from Miss Gibson in answer thereto. The Board approved the proposed letter. Mr. Seal voting present."

The letter attached thereto, dated November 15, 1937, from Mattie M. Gibson, Superintendent, to William F. Penniman, Group Health Association, was read to jury, as follows:

"DEAR MR. PENNIMAN:

At a meeting of the Board of Directors of the Children's Hospital, held November 15th, I was authorized to reply to your letter of November 8th as follows:

The Children's Hospital will accept for treatment or hospitalization any patient in need of care, under its charter, rules and regulations.

This pertains to indigent, semi-indigent, and a very limited number of pay patients—as we have only twenty-seven beds available for pay patients.

All doctors treating these patients while in the hospital must have staff appointments and be members of local Medical Societies.

Dr. Raymond E. Selders has made no application so far for staff appointment."

Mr. Allen: If it will be satisfactory to defense counsel I will not read Exhibit 359, which is a letter sent by Miss Gibson to Mr. Penniman, dated November 16, 1937. It is quite similar to the one attached to the minutes and approved, with the exception that it doesn't have the words "and be members of the local medical societies".

Gov. Ex. 359 was received in evidence and read in part to the jury, as follows:

"November 16, 1937.

MR. PENNIMAN:

All physicians treating patients while in the hospital must be members of the Medical or Courtesy Staff, appointments to which are made annually by its Board of Directors after individual examination into the qualifications of applicants by regular hospital channels.

Miss Gibson."

Gov. Ex. 522 was received in evidence and read to the jury, as follows: "Minutes of the annual meeting of the incorporators and members of the Children's Hospital of the District of Columbia of December 6, 1937.

"Upon proper motion, duly seconded, it was unanimously voted to amend Article 33, Medical Staff—of the By-Laws and Rules by adding the following:

Only physicians, surgeons, and dentists who are licentiates of the District of Columbia and also members of the District Medical Society or ethical body in their locality shall be eligible for appointment to the Medical Staff.

Physicians, Surgeons, and Dentists not officially connected with the Hospital, but members of their ethical medical societies, may be accorded the privilege of using the facilities of the Hospital as a matter of courtesy for a term that shall continue during the pleasure of the Board of Directors, those accepting such privileges to be known as the Courtesy Staff."

Gov. Ex. 523 was received in evidence and read to the jury, as follows: "Minutes of the meeting of the medical staff of the Children's Hospital of April 4, 1938.

"Dr. Wall mentioned the letter written by Dr. Drayton to Senator Capper,—

Senator Capper is written in handwriting and the words 'the newspapers' is stricken out.

—relating to the Group Health situation. Dr. Wall stated that the Board of Directors had supported the Medical Staff in the differences over Group Health.

Dr. Wall presented a resolution formulated to take care of emergency admissions to the Hospital. It was moved and seconded that this ruling be adopted. After discussion by several members of the Staff, the ruling was adopted.

Dr. Hagner moved that the Chairman of the Medical Staff get together with the Chairman of the Medical Staffs of other hospitals to adopt uniform rules covering the admission of Group Health patients. Seconded and carried."

MRS. CAROLINE REECE EPPERLEY, a witness for the United States.

Direct examination.

By Mr. Kelleher:

I am secretary to the superintendent of Sibley Hospital. A record is kept of every case coming into the hospital. A

record is kept for each patient, known as a patient's record, including patients on whom surgical operations are performed. In the regular course of business records of pathological laboratory examinations are kept. I identify Gov. Exs. 580, 581, and 582 as the patient's record, the operative record, and the report of examination of tissue, pathological laboratory, respectively, of Mr. Charles Hardin. The Medical Council of Sibley Hospital is an organization of the doctors that serve in the various departments, and is composed as a part of the clinical staff chosen from the regular or attending staff of the hospital. Dr. Thomas E. Mattingly is a member of that staff, and was in 1937 and 1938, and also was a member of the Medical Council. Dr. J. T. Mann is on the Medical Council of Sibley Hospital and was on that Council in 1937.

MRS. CHARLES HARDIN, a witness for the United States.

Direct examination.

By Mr. Kelleher:

I was a member of Group Health Association in 1937 and reside in Arlington, Virginia. I had a family membership in Group Health entitling my husband to benefits. On June 19, 1938, my husband became ill and late Sunday night the pain became severe and it was necessary to call in Dr. Solet. Dr. Solet examined Mr. Hardin and asked that a surgeon be called in. A surgeon, Dr. Bachrach was called in. Mr. Hardin was taken to Sibley Hospital. Before leaving for the hospital I telephoned my brother, a charter member of Group Health, to meet me at the hospital, which he did. Mr. Hardin was operated on at the hospital. Prior to the operation I had a telephone conversation with Dr. Selders, the Group Health surgeon. The patient was operated on by Dr. Bachrach.

Q. What instructions, if any, did you give the cashier of the hospital concerning your hospital bill after your husband had recovered from his operation?

The defendants objected on the ground of incompetency, irrelevancy, and immateriality, and that whatever answer the cashier of the hospital gave would be hearsay and not the proper way of showing the instructions given her by the

hospital. These objections were overruled and an exception was allowed.

A. I asked that she send the bill to Group Health Association, of which I was a member.

Q. What was her response?

The same objections, which were overruled with an exception.

A. She said that she had contracted with me and not with Group Health, and therefore it was my bill, and she had nothing to do with Group Health.

Q. How did you pay the bill?

A. In cash, which Mr. Kirkpatrick gave me.

SHERWOOD K. BOOTH, a witness for the United States.

Direct examination.

By Mr. Kelleher:

I live in Arlington, Virginia. In June, 1938, I was a member of Group Health. On June 19 I received a telephone call from my sister and as a result went to Sibley Hospital to see her and my brother-in-law, who was going there for an emergency appendicitis operation. My sister's name is Mrs. Charles G. Hardin, Jr. On arriving at the hospital I spoke to the night supervisor, Miss Realini, to ascertain whether Dr. Selders, chief surgeon of Group Health, would be permitted to operate on my brother-in-law.

Q. Will you continue with your testimony concerning this conversation with Miss Realini?

This question was objected to on the ground that the answer would be incompetent, irrelevant, and immaterial, would be hearsay, and that it was not the proper way to show the attitude of the hospital. These objections were overruled and exceptions were allowed.

The Court: Objection overruled. Can you identify the doctor in the case, if a doctor's name was mentioned?

Mr. Leahy: Some young lady, he is talking about.

The Court: This gentleman said that he inquired of this lady about the Group Health doctor. I was wondering whether the name of a particular doctor was mentioned.

By Mr. Kelleher:

Q. Was the name of a particular doctor mentioned?

A. Yes; it was.

Q. What was the name of the doctor?

A. The name of the doctor was Dr. Selders, who was at that time the chief surgeon on the staff of Group Health Association.

Q. Will you continue with your testimony concerning this conversation with Miss Realini?

A. As soon as my brother-in-law arrived there I immediately went to the desk on his behalf to find out whether it would be agreeable to the hospital to have Dr. Selders operate on him. Miss Realini replied that she was very sorry, but that Group Health doctors were not permitted to operate in that hospital. I explained to her the emergency of the case, but from the circumstances she was well aware of that. But she said it did not make any difference whatsoever, regardless of the events; she was terribly sorry, but she was without authority to permit a Group Health doctor to come in there.

I mentioned the fact that Dr. Selders was the name of the doctor who was to do the operating. She again reaffirmed her previous statement and, as I recall, she had a slip of paper on the desk, on her side of the desk, and she referred to that, and upon doing so she again stated that she was awfully sorry, but Dr. Selders would not be permitted to operate.

In Miss Realini's presence I called Dr. Selders on the telephone.

The defendants at this point objected to any conversations between the witness and Dr. Selders over the telephone on the ground they would be pure hearsay, incompetent, irrelevant, and immaterial.

The Court then inquired of the witness if the substance of the conversation was conveyed to the lady and, upon being informed that it was, overruled the objection, allowed the defendants an exception, and the witness then testified as follows:

I mentioned to Miss Realini that Dr. Selders said he could come here in ten minutes and operate on the patient. Thereupon Miss Realini replied that she was terribly sorry

but, as she said before, he could not operate. Thereupon Dr. Selders asked me over the phone to hand the phone to Miss Realini.

Over similar objections of the defendants, to which an exception was allowed, the Court permitted the witness to testify as follows:

Q. Did you tell Miss Realini that Dr. Selders wanted to speak to her?

A. Yes.

Q. Did she take the telephone and speak to Dr. Selders?

A. Yes. I was sitting in front of Miss Realini, and I handed the 'phone over to her and she spoke to Dr. Selders in my presence.

Q. What did she say?

A. She told Dr. Selders, in a very congenial way, but very firmly, that she was terribly sorry, but that he would not be permitted to operate in that hospital, being a Group Health doctor.

Q. Did she have this slip of paper which you mentioned before?

A. She did. She still had that in front of her.

Q. Was there anything more said?

A. I don't think so. The conversation, of course, was between them, and I heard her end of the conversation.

Q. After this conversation did you receive another telephone call?

A. Yes. The 'phone was no more than hung up and it rang again and it was Dr. Selders calling back and he asked to speak to me.

Q. Did you speak with him?

A. I did.

Q. Did you tell Miss Realini what Dr. Selders said on this occasion?

A. I did.

Q. Will you tell us what you told Miss Realini Dr. Selders said?

A. Yes. I told Miss Realini that Dr. Selders called again wanting to discuss the advisability of having the patient moved to Casualty Hospital; that Dr. Selders had told me that if the patient were moved there there was a reasonable likelihood that he could operate on the patient at Casualty Hospital; he was not sure, but he thought he might be able to make such arrangements.

Q. What did Miss Realini say?

A. Miss Realini did not have much to say. Of course she understood it was——

Mr. Leahy: I object to the conclusion.

The Court: What did she say?

The Witness: She had nothing more to say to that except that I mentioned to her that I was awfully sorry that the Group Health doctor could not operate, and she again explained her position, that she was the night supervisor of the hospital, but she had her orders as to those who were on the courtesy list and she was sorry, but there was nothing she could do about it.

My sister talked over the telephone with Dr. Selders in my presence and in the presence of Miss Realini, and my sister said to Dr. Selders that the doctors had told her that Mr. Hardin should be operated on immediately; that they were taking his blood count, were preparing him for an operation, and she explained to Dr. Selders that it wouldn't be reasonable to move the patient. After these telephone conversations Mrs. Hardin authorized Dr. Bachrach to operate on her husband. "It was understood, however, from my conversation with my sister, that this doctor, Dr. Bachrach, would be given the authority to operate in the event that we were unsuccessful in having the hospital's permission to have a Group Health doctor operate."

Cross-examination.

By Mr. Leahy:

I didn't know Dr Bachrach personally. I didn't know my brother-in-law was sick before being notified by telephone. I arrived at the hospital close to midnight on Sunday; a minute or two later my brother-in-law and my sister arrived with Dr. Solet, concurrently Dr. Bachrach came in. While I was talking on the telephone to Dr. Selders, Dr. Bachrach was upstairs with my brother-in-law, though I am not sure about this, though word came down that the operating room was being prepared and that a blood count was being taken. I received word that an operation was so imminent I didn't feel that my brother-in-law should be moved from one hospital to another. When I talked to Miss Realini, the night supervisor or superintendent at the hospital, she told me that Dr. Selders couldn't operate because he

was not on the courtesy staff. I didn't know Dr. Solet before that evening. My brother-in-law was operated on by Dr. Bachrach, and he was out of the hospital in a week's time.

Gov. Exs. 580, 581, and 582 were offered in evidence. Defendants objected on the ground that these papers were incompetent, irrelevant, and immaterial. Objections overruled and exception allowed.

Gov. Ex. 580 was received in evidence and read to the jury, as follows:

"Sibley Memorial Hospital
Patient's Record

Adm. No. 128467
Adm. Date 6-19-1938, at 11:45 p. m.
Dis. No. G 3724
Dis. Date 6-25-38
Name, Mr. Charles Hardin, Rm. No. 201 M
Street and No. 212 N. Piedmont St., Arlington, Va.
Occupation, Salesman. Age, 25. Nationality, Miss.
Reference, Mrs. Helen Hardin. Relationship, Wife.
Street and No. 1.
Doctor Bachrach. Admitted by M. Realini.
Diagnosis: Acute appendicitis.
Condition on discharge, improved.
Operation: Appendectomy.
Record prepared by Menke, Intern.
Edited and approved, Leo Solet, M. D. Attending physician."

Gov. Ex. 581 was received in evidence and read to the jury, as follows:

"Sibley Memorial Hospital
Operative Record

Case No. 128467
Date, June 20, 1938.

Name, Mr. Charles Hardin. Location 201 M.
Preoperative Diagnosis: Appendicitis.
Postoperative Diagnosis: Same.
Surgeon, Dr. Bachrach.
Anesthetist, Dr. Katzman.
Operation: Began 12:15 a. m., closed 1:10 p. m.

Condition during anesthesia: Good.
Immediate postoperative condition: Good.
Operation: Appendectomy.
Signature of Operator, L. Bachrach."

Gov. Ex. 582 was received in evidence and read to the jury, as follows:

"Sibley Memorial Hospital, Pathological Laboratory, Report of Examination of Tissue

For Dr. Bachrach. Patient's name: Mr. Charles Hardin.
Date 6-23-38. Date received 6-20-38.
Hospital Number 128467. Lab. Number 16467.
Material Appendix 201 M.
Clinical Diagnosis or comment: Acute appendicitis.
Sections: Frozen. Embedded —.
Diagnosis: Acute Catarrhal Appendicitis.
Tissue Description: The appendix is highly congested and covered with dilated vessels as well as tortuous ones of long-standing. The organ measures 8 cm. in length by 0.9 cm. in diameter and on section cuts with slight resistance revealing an ovoid, broadly dilated lumen filled with catarrhal exudate. The mucosa is partially eroded and the submucosa and muscular coats are thickened and edematous. The picture presented is that of an acute exacerbation of a chronically inflamed organ.
Reported:
Oscar B. Hunter, M. D., Pathologist."

JAMES ROBERT ADAMS, a witness for the United States:

Direct examination.

By Mr. Kelleher:

I live in Washington. I know Miss Elizabeth Tew. About seven o'clock on the evening of February 26, 1938, I received a telephone call requesting that I go with Miss Tew and Miss O'Connor to the hospital. I called a cab, went to Miss Tew's apartment, assisted her into the cab and went to the Garfield Hospital, where arrangements were made for her entry. An interne made an examination of Miss Tew, at 8:15 p. m. she was given an injection of morphine. At 10 o'clock Dr. Selders and Miss O'Connor came to the

room and said the operation would not be performed that night. Thereafter Dr. Dugan and a nurse came into the room and said that the privileges of the hospital had not been extended——

To this portion of the answer objection was made on the ground that it was incompetent, irrelevant, and immaterial, and hearsay, which objection was overruled and exception noted, and the witness testified as follows:

I thought Dr. Dugan was a hospital physician and he said that the privileges of the hospital had not been extended to Dr. Selders, since he was a member of Group Health, and that the operation could not be performed by him, and offered the facilities of the staff at Garfield, which Miss Tew refused. Dr. Dugan then asked Miss Tew to sign a release in order to leave the hospital, which, upon advice, she refused.

Miss Tew, on receiving morphine, lost consciousness for about 30 minutes and otherwise was in a semi-stupor and was in a stupefied condition when Dr. Dugan came into the room. The release, Gov. Ex. 584, was read out aloud in my presence. At 11 o'clock Dr. Dugan returned and again offered the services of the staff and suggested that Miss Tew secure the services of another surgeon. At 12 o'clock I left the room, Miss Tew was dressed, a wheel chair was brought in, and Miss Tew was taken to the front door. A cab was called and was waiting. It was necessary for Miss Tew to sit upon the steps of the hospital before entering the cab because she was more or less nauseated. She sat on the steps 10 or 15 minutes and then proceeded to her home, where she was put to bed with ice packs.

Cross-examination.

By Mr. Leahy:

A telephone call was received by me from Miss Davis or Miss O'Connor. I have known Miss O'Connor since 1936. Miss Davis and Miss O'Connor are the same person, as she uses the name of Miss O'Connor around the office where she works, the Works Progress Administration, where I also work. I knew Miss Tew through Miss Davis, about a year and a half. Miss Tew and Miss Davis had an apartment together. I didn't know Dr. Selders personally and never saw him before that night. I don't know anything about

the courtesy staff at the hospital. Miss Davis entered Miss Tew on a Group Hospitalization card. On admission Miss Tew was immediately assigned to a room and preparation begun for an operation. Dr. Dugan examined Miss Tew. Two examinations were made of Miss Tew by internes. Dr. Dugan said that Dr. Selders was not on the courtesy staff and couldn't operate because he was not on that staff. Dr. Dugan offered to Miss Tew anyone on the staff at Garfield to operate, but Miss Tew replied, "No," she wouldn't take anybody from the staff of Garfield. Miss Tew stated she wouldn't have any one of the doctors operate and, if necessary, she would leave the hospital, and about two hours after that she left the hosiptal. Dr. Dugan read aloud the release he wished Miss Tew to sign; but Miss Tew refused to sign the release on advice of Dr. Selders and Miss Davis. About midnight a wheel chair was obtained for her; she was taken to the outside door, on the porch. She sat on the steps of the porch for about 10 minutes with me and Miss Davis, with the cab waiting there. No one was asked to go back in the hospital, and the three of us just sat and waited and were unable to get Miss Tew into the cab, as she was nauseated and sick. Ten or 15 minutes later she was taken home, assisted into her apartment, prepared for bed, and an ice pack was placed on her. Dr. Selders returned to the room before she left the hospital. About 11 o'clock Dr. Dugan reoffered the facilities of the staff of the hospital to Miss Tew and made the suggestion that she have another examination by another physician and surgeon. A half an hour after I had brought Miss Tew home I left her at her apartment and that ended the matter so far as that night was concerned.

PEGGY O'CONNOR, a witness for the United States:

Direct examination:

By Mr. Kelleher:

I am sometimes known as Miss Davis. In 1938 I lived with Miss Elizabeth Tew. On the 19th of February Miss Tew became ill, went home to bed and called in a Group Health doctor, as she was a member of that organization. The doctor felt the case called for an operation and called Dr. Selders, a surgeon, who made an examination. Miss

Tew had appendicitis; she was taken ill Saturday afternoon and on Sunday the doctor was called in, and then the surgeon came within an hour. An ice pack was placed on her stomach and side. She remained in the apartment four or five days and Dr. Selders was called again. He saw her every day, and the case had subsided. Later in the week Miss Tew became worse and I then called Group Health, telling them I thought something should be done, as Miss Tew had been lying there with soups and liquids and water. On February 26th Miss Tew and I went to Garfield Hospital, at Dr. Selder's direction. At the desk I entered Miss Tew and I had her credentials showing that she was a member of Group Health. She was assigned to a room. An interne then examined Miss Tew and then another doctor came in, Dr. Dugan, and gave her a thorough examination. Miss Tew was then given morphine, became unconscious, and went out of her head. I then went to the desk and was told that Dr. Selders was in the operating room. I went to the operating room, where Dr. Dugan and Dr. Selders were both dressed for an operation. I asked what was prolonging the operation and Dr. Selders said he was not permitted to operate because he was a member of the staff of Group Health. Dr. Dugan said, after examining the case, he didn't find it acute. Dr. Selders stated, "He refuses to let me operate until he gets authority." I said, "This is no time to argue whether it is acute or not acute. Dr. Selders has examined her and pronounced it acute and I wish something could be done." Dr. Selders then said to me there was nothing he could do and said, "It is definitely acute." Dr. Dugan walked into Miss Tew's room, stating he would like to offer her the services of someone on the hospital staff and that he wanted her to sign a release. I refused to let Miss Tew sign the release as she didn't know what she was doing. Miss Tew asked if it was necessary to sign it in order to leave, and Dr. Dugan said no, it was not necessary. I then called a cab. Dr. Dugan returned to the room a second time after reading the release. A wheel chair was brought; she was put in it and wheeled to the front entrance, where she fainted on the steps. Miss Tew remained 15 or 20 minutes on the steps. She wasn't conscious until she arrived at her apartment, where she was practically carried in by Mr. Adams and me and put to bed with an ice pack.

Cross-examination.

By Mr. Leahy:

I was rooming with Miss Tew when the latter was taken sick. I have known Mr. Adams for four or five years and we were very good friends. We were going together at the time. I called Mr. Adams the night Miss Tew went to the hospital. Miss Tew had been sick for about four or five days. Some one of the Group Health doctors had diagnosed her case as appendicitis a week before she was taken to the hospital. Dr. Selders left her in her apartment approximately four days, the reason being that he didn't have a hospital to which to take her. As soon as he was able to take her to Garfield he did. I had been feeding Miss Tew soup and broth for about a week. On the evening of the 26th Miss Tew became quite ill and Dr. Selders came to the apartment and said he would make arrangements to move her to a hospital. Dr. Selders told me to take the patient to the hospital, present her Group Health card at the desk, which was done, and Miss Tew was assigned to a room. The only question that arose that evening was whether Dr. Selders had courtesy staff privileges to operate in the hospital. I naturally assumed he had such privileges and would not have gone to the hospital if I did not think so. I wouldn't have advised my friend to go to the hospital to be operated on by Dr. Selders if I had known he didn't have such privileges. When it was ascertained from Dr. Dugan that Dr. Selders could not operate, I took the position that if Dr. Selders couldn't operate I would take Miss Tew out of the hospital. I told the people at the hospital that unless Dr. Selders was permitted to operate that Miss Tew would leave the hospital. When Dr. Dugan read a release at the foot of the bed I advised Miss Tew against signing it. I called a cab to take Miss Tew from Garfield, and it was waiting for us at the steps when Miss Tew fainted and slumped down between Mr. Adams and myself. I recall that Dr. Dugan mentioned several surgeons on the staff, saying how competent they were, and asked Miss Tew if she would not make a selection from that list, but I said "No" for Miss Tew and said if she couldn't have Dr. Selders she would leave the hospital.

Gov. Ex. 584 was received in evidence. Mr. Kelleher pointed out that there was written on the bottom of the release the following:

"Patient refused to sign release slip at 9:55 p. m."

And on the margin:

"Present, but not signing."

ANNA MARY DENNINGER, a witness for the United States.

Further redirect examination.

By Mr. Lewin:

I am the secretary to Jesse T. Mann. Dr. Mann's signature is on Gov. Ex. 583. Everything on the bottom is in Dr. Mann's handwriting.

Thereupon the Government offered in evidence Gov. Ex. 583, which was objected to by defendants because incompetent, irrelevant, and immaterial, and all that was shown was that Dr. Mann's signature appeared on it at the bottom of the exhibit. These objections were overruled and an exception was allowed.

Gov. Ex. 583 was received in evidence and read to the jury, as follows:

"Sibley Memorial Hospital,
1150 North Capitol Street,
Washington, D. C.

November 27, 1937.

DEAR DOCTOR:

Dr. Raymond Everett Selders has requested the privilege of treating the following in Sibley Memorial Hospital: Medicine, Minor and Major Surgical, Normal and Abnormal Obstetrics, Minor Gynecology, Major Gynecology.

As a member of the Advisory Committee on Surgery will you kindly indicate your approval or disapproval at the bottom of this letter and return it to the office of the President of the Hospital before Tuesday.

Very sincerely yours, Paul S. Putzki, M. D., Chairman.

Applicant's credentials on file in the office of the President.

Attention of the Committee is called to the fact that above applicant is one of the salaried physicians of the Home Owners' Loan Corporation Group Health Association and that information as to his qualifications and correspondence in connection with his application will be found on file in the President's office available to members of the various committees concerned for their information.

Not approved.

(Signed) J. T. Mann."

Government offered Gov. Ex. 295-A, a copy of a letter from Dr. Ireland to Dr. Cutter, dated March 27, 1937, which bears the notation "copy to Leland." Defendants objected on the grounds that it was immaterial, irelevant and incompetent. Objection overruled and exception allowed.

(Gov. Ex. 295-A was admitted in evidence.)

WILLIAM F. PENNIMAN, recalled as a witness for the United States.

Further direct examination.

By Mr. Kelleher:

Miss Elizabeth Tew was taken to Garfield Hospital. I talked to Mr. Eisenman, Superintendent of Garfield Hospital, in the latter part of November, 1938.

Q. What was the conversation you had with him?

Objections were interposed by the defendants that it was incompetent, irrelevant, and immaterial, that no conspiracy had been proven, that no conspiracy had been proven to which Garfield Hospital was a party, no authority had been shown in Dr. Eisenman to speak for the hospital, a corporation, admittedly controlled by a lay board of directors, and it was hearsay.

These objections were overruled, exception allowed the defendant, and the witness answered as follows:

A. It was quite lengthy; we went into a good deal of discussion about Group Health and he told me, the most important thing was that no hospital had the right to refuse admission to a patient in an emergency case, and that no hospital had the right to refuse that patient the right

to bring their own doctor, if it was an emergency, so long as such doctor was duly and properly licensed to practice medicine in the District of Columbia. Following that he told me that I could tell Dr. Brown, Medical Director, that in those cases which were emergency he could send such cases to Garfield and that Dr. Selders, who was regularly licensed to practice medicine in the District of Columbia, could attend them.

That permission was formally revoked subsequently.

Cross-examination.

By Mr. Leahy:

I don't remember the date when that emergency permission was revoked but I do remember that there was a letter to him in which it was stated that until the legality of Group Health was determined he would not have any privileges in the hospital. There was no other revocation of the emergency privileges than that contained in the letter, but I don't remember the date of the letter, and I assumed that Dr. Selders accepted the letter as a revocation of his right to bring into Garfield even an emergency case and he didn't go back.

CLARK PAUL HALSTEAD, a witness for the United States.

Direct examination.

By Mr. Kelleher:

I am a doctor of medicine, specializing in minor surgery and general medicine, employed by Group Health, which I joined in August, 1938. I did my pre-medical work at George Washington University, transferred to Georgetown University, interned at Georgetown University Hospital, which work I finished on June 30, 1938. After joining Group Health I applied for courtesy privileges at Georgetown, Garfield, Providence, Emergency, George Washington, and Sibley Hospitals in August, 1938, with the exception of Garfield, where I applied in October, 1938. I applied for privileges in general medicine and minor surgery. Minor surgery excludes abdominal surgery or other major types of surgery and would include many things a gen-

eral practitioner with certain experience is entitled to do. Prior to December 20, 1938, no action was taken on these applications, I believe, except that Emergency Hospital notified me that I was not admitted, though I do not think that information came prior to December 20, 1938.

Cross-examination.

By Mr. Leahy:

I finished my interne training on June 30, 1938, and I was approached by Dr. Selders of Group Health in August. I began my employment with Group Health on August 1. I personally made applications to the hospitals by letter in August. I didn't save copies of any of the letters making applications to the hospitals, and I don't know where those copies are.

Over the objection that the following documents are all incompetent, irrelevant, and immaterial, and were not admissible because no conspiracy had been proven against any of the parties involved; that the letters in the main were hearsay and were not shown to have been properly authorized, the Court admitted in evidence the following exhibits:

(Gov. Exs. 441-A, 194, 72, 73-A, 80, 81, 123, 124, 538, 539, 540, 543-A, 545, 558, 563, and 564 were received in evidence.)

The following exhibits were read to the jury:

Gov. Ex. 72 is a letter from Dr. Conklin to Dr. Holman Taylor, Secretary, State Medical Association of Texas, dated October 30, 1937:

"DEAR DR. TAYLOR:

I was very happy to hear from you and particularly glad to learn of your successful operations. It is indeed odd to have kidney stones without knowing it, but their removal, I am sure, will mean real satisfaction and the elimination of potential danger.

The Group Health Association is progressing. October 30, tonight, there is a banquet at the Mayflower Hotel which will be addressed by Richard Cabot of Harvard University. Most all of the hospital superintendents have been invited to attend, some of whom, I believe, will fail to be repre-

sented at the gathering. Our President received a letter of invitation, also a ticket. Needless to say this will represent another vacant chair. The staff is made up, according to information at hand, of 5 doctors, in one of whom you may have an interest, due to the fact that the American Medical Directory states that he is a member of the State Medical Society of Texas. Raymond Everett Selders appears to have been born in 1892; graduated at the University of Oklahoma, 1927, etc., etc. He, I believe, will assume the surgical responsibilities.

The clinic is located on the second floor of a building in the downtown section. The first floor is occupied by an electrict light appliance concern. Reports show that they have received some financial assistance from the Federal Home Loan Bank Board. The setup, without the shadow of a doubt, seems to have the smiling approval of the various New Deal officials and the Secretary of Labor, on through.

I am hoping that the residual soreness as a result of your operation will have completely vanished by the middle of November so that we all may have the advantage of your presence and counsel at the American Medical Association meeting of State Secretaries.

With cordial regards, I am

Fraternally yours, C. B. Conklin, M. D., Secretary."

Gov. Ex. 73-A is a letter from Dr. Holman Taylor to Dr. C. B. Conklin, Secretary, Medical Society of the District of Columbia, dated Nov. 4, 1937.

"DEAR DR. CONKLIN:

I thank you for your favor of October 30, in reply to my letter of October 27, and having to do with the health insurance situation in the District of Columbia, just received.

I note with interest that a member of the Harris County (Texas) Medical Society is a member of the staff of the institution which is to be set up in Washington as a beginner in 'State Medicine'; that, in fact, he will take charge of the surgery in the new setup, Dr. Raymond Everett Selders.

Please let me know just as soon as the situation has developed in the District of Columbia to such an extent that charges of unethical conduct may be successfully lodged against Dr. Selders. I will see that the facts in the case are laid before his society. I don't believe the members of that organization will stand for anything of this sort, but even so, they are very fair down there, and rather discriminating.

They tend to their knitting like few other organizations of the sort with which I am acquainted. If we will give them the facts, they will do the buck; without the facts, they will hardly do anything about it.

I note your statement that the Group Health Association about which we have been writing, is about ready to go. Again I give it as my opinion that this organization has been inspired by some who are in high authority in our national government.

With personal regards,

Fraternally yours, Holman Taylor, Secretary."

Gov. Ex. 538 is a letter dated November 25, 1937, on the letterhead of the Columbia Hospital for Women, Washington, D. C., signed by P. M. Ashburn, M. D., Secretary of the Medical Board, addressed to the Secretary, Houston Medical Society, Houston, Texas.

"SIR:

I am directed by the Medical Board of this hospital to seek your aid in determining the qualifications of Dr. Raymond E. Selders, who practiced in Houston from 1928 to 1935, for doing major and gynecological surgery and operative obstetrics.

Dr. Selders is an employe of a medical cooperative or insurance organization recently formed by employes of the Home Owners Loan Corporation. This movement has received national attention and has excited much opposition in local medical circles. Dr. Selders, while apparently a generally well trained man, has not submitted evidence of the special training and experience usually demanded by this hospital of men seeking the privilege of doing operative work in gynecology and obstetrics.

Because of the special circumstances of the particular case and the Board's desire to act in a fair and judicial manner, any assistance you can give it will be greatly appreciated and will be held confidential."

Gov. Ex. 539 is a letter dated December 2, 1937, from Dr. Walter A. Coole to Dr. Ashburn:

"DEAR DOCTOR ASHBURN:

Your letter of November 25th regarding the qualifications of Dr. Raymond E. Selders has been referred to me for answer.

Dr. Selders is a member of this Society in good financial standing. His record here is clear and shows that he is academically and professionally well qualified. I have been given to understand that recently he completed his Masters Degree in Surgery at the University of Pennsylvania which should further qualify him.

We have been recently informed that he is an employee of the Home Owners Loan Corporation in a contract medical capacity and our Board of Censors are at present investigating the source of this information.

The Harris County Medical Society strongly condemns any such practice and if the allegations are found to be true, Dr. Selders will be subject to disciplinary action on the part of the Society.

Further than this, I have no information."

Gov. Ex. 81 is a letter dated January 14, 1938, on the letterhead of the Harris County Medical Society, signed by A. T. Talley, Chairman, Board of Censors, Harris County Medical Society, addressed to the Secretary, Medical Association of D. C.

"DEAR DOCTOR:

The Harris County Medical Society, a component of the State Medical Association of Texas and the American Medical Association, is very anxious to know the medical status of the so-called Group Health Association, located there in Washington. We are especially anxious to know the ethical standing of the men who compose its staff as one of the staff members belongs to our local Society.

Any information you are in position to give us will be appreciated."

At the bottom, and on the back in pencil is a letter which has been identified as having been written by Dr. Conklin. It is identical with Gov. Ex. 80, which I will read.

Gov. Ex. 80 is a letter from Dr. Conklin to Dr. A. T. Talley, Chairman, Board of Censors, Harris County Medical Society, dated January 19, 1938:

"In re: H. O. L. C. Group Health Association

DEAR DOCTOR TALLEY:

In reply to your letter of January 14, 1938, I would state that two members of this Society accepted employment;

one at $2,400 to take all calls, another at $4,800. The latter resigned from H. O. L. C. after his 'trial' before an appropriate committee of the Society for violation of provisions of the Society's Constitution lasted one night. The other continued; his hearing is now completed. It would seem that he will lose his membership. It must be noted that much praise was given him by the full-time governmental attorneys who represented him.

I am enclosing certain available mimeographed information. Should you wish any further data please communicate with me."

Gov. Ex. 540 is a letter dated January 31, 1938, on the letterhead of the Harris County Medical Society, from A. T. Talley, Chairman, Board of Censors, Harris County Medical Society, to Dr. Raymond E. Selders, 2445 Fifteenth St., Washington, D. C.

"DEAR DOCTOR:

At a business meeting of the Harris County Medical Society, January 26, 1938, the Board of Censors reported that it had received a communication from the Secretary of the District of Columbia Society through Dr. Holman Taylor, Secretary of the State Medical Association of Texas at Fort Worth, that a member of the Harris County Medical Society had accepted a position on the Surgical Staff of the so-called Group Health Association made up of Federal employees of the HOLC, located in Washington, D. C. (No name was mentioned.) The Board of Censors stated from their interpretation of the Code of Ethics of the American Medical Association, under which we practice, that it was unethical for one of our members to accept a position of this kind. This interpretation was upheld by a unanimous vote of the Society.

Hoping you will continue to be with us and that we may hear from you immediately, I am

Sincerely,"

Gov. Ex. 541 is a letter dated February 10, 1938, from Dr. Raymond E. Selders to Dr. A. T. Talley, Chairman, Board of Censors, Harris County Medical Society, Houston, Texas.

"It will be greatly appreciated if I may have from you a frank statement of the grounds on which the action which

your letter discloses were taken. It seems to me that I am entitled, under the circumstances, to a full expression of the views of the membership which brought forth what you have described as a unanimous vote of the Society."

Gov. Ex. 556 is an excerpt from the minutes of the Harris County Medical Society dated January 26, 1938:

"Dr. A. T. Talley, chairman of the Board of Censors, reported upon an appeal from a decree of the Adjudication Committee, the approval of two new members for membership, and the matter of one of our members affiliating with a contract organization in Washington, D. C. Motion made, seconded and carried that this report be accepted. Report attached."

Gov. Ex. 558 is an excerpt from the regular business meeting of the Harris County Medical Society dated March 30, 1938:

"Dr. A. T. Talley, reporting for the Board of Censors, preferred formal changes of unethical practice against Dr. Raymond E. Selders. These charges are attached hereto and made a part of these minutes."

Gov. Ex. 545 is a letter dated April 15, 1938, from Dr. Coole to Dr. Selders.

"DEAR DR. SELDERS:

This is to inform you that formal charges, copy of which were sent to you, were read by the Board of Censors at the last regular business meeting of the Harris County Medical Society, March 30th, 1938.

These charges shall be submitted to the Society in executive session at the next regular business meeting April 27th, 1938, for action by the Society.

In accordance with the Bylaws and Constitution of the Society, you may conduct your own defense, or select some other member to conduct it for you. If you should be absent, or fail to appoint some member, the president shall appoint a member to defend you.

I am in receipt of your answer to these charges and shall turn them over to the member appointed to defend you should you be absent.

Sincerely yours, Walter A. Coole, M. D., Secretary."

Gov. Ex. 543-A is a letter dated March 9, 1938, signed by three members of the Board of Censors:

"Mr. President and Members, Harris County Medical Society.

The Board of Censors of your Society does hereby formally prefer charges of unethical practice against one of your members, Dr. Raymond E. Selders.

This incident charges him with accepting a position on the surgical staff of a group health association, made up of Federal employees of the Home Owners Loan Corporation, located in Washington, D. C. This type of practice is unethical as judged by Article VI, Section 3 of the American Medical Association's Code of Ethics, in that:

(1) The compensation is inadequate to assure good medical service.

(2) It interferes with reasonable competition among the doctors in the city of Washington, D. C.

(3) It interferes with the free choice of a physician by the patient.

(4) It is contrary to sound public policy.

Respectfully submitted, A. T. Talley, M. D., Chairman, John H. Foster, M. D., C. M. Warner, M. D."

Gov. Ex. 560 is the minutes of the regular business meeting of the Harris County Medical Society dated April 27, 1938.

"The President announced an executive session. Assembly Hall was cleared at 8:30 p. m.

Dr. J. C. Alexander was appointed by the President to act as defender to formal charges filed against Doctor Raymond E. Selders.

The formal charges as set forth in the minutes of the Business Meeting of March 30th, were read by the Secretary.

The President asked the Defense, "What is your answer —Guilty or Not Guilty?"

Dr. J. C. Alexander: Not Guilty. Is Dr. Selders a member in good standing of this Society?

Secretary: Dr. Selders is on the rolls of the Society as a suspended member, his dues having expired April 1st.

Dr. J. C. Alexander: I make the motion that these charges be deferred inasmuch as Dr. Selders is not a member in good standing.

Dr. William E. Ramsay: We have no other option, other than to proceed with this trial.

Dr. A. T. Talley: There is no question about the status of Dr. Selders. As a suspended member on the rolls of the Society, he is under the discipline of the Society; however, I wish to offer this resolution:

'Dr. Raymond E. Selders, a member of our Society, was indicted by the Board of Censors for unethical practice upon a complaint from the District of Columbia Society, through Dr. Holman Taylor, Secretary of the State Medical Association of Texas, that he had accepted a position on the surgical staff to do contract practice for a Group Health Association, made up of Federal employees of the HOLC in Washington, D. C.

'Since reading the indictment to the Society at the March Business Meeting, the Board of Censors has had an opportunity to study the By-Laws of the American Medical Association in reference to this matter and we find in Chapter IX, Section 1, pertaining to duties of standing committees and councils, words which according to our interpretation, mean that in any controversy between a constituent association and a member or members of another constituent association, the Judicial Council has original jurisdiction in adjudicating the controversy. Therefore, according to this By-Law, the controversy between the District of Columbia and Dr. Selders, who is a member of the State Medical Association of Texas, both constituent associations, should be referred by this Society directly to the Judicial Council of the American Medical Association for adjudication.

'The Board of Censors moves that this be done.'

Dr. J. C. Alexander: Will the Chairman of the Board of Censors quote this authority?"

"The President called for a vote upon the motion of the Board of Censors. The motion carried by a vote of 41 in favor of the motion and 4 against it."

Mr. Allen: And without reading the minutes, if it is agreeable to counsel, may it be understood that it was referred to the American Medical Association and was returned by the American Medical Association to the Harris County Medical Society?

Mr. Leahy: Yes.

Gov. Ex. 563 is the Minutes of the Special Business Meeting of the Harris County Medical Society on November 23, 1938:

"Meeting called to order by Dr. John T. Moore, President.

Dr. A. T. Talley presented the following resolution of the Board of Censors:

'The Board of Censors, Drs. A. T. Talley, John H. Foster, and Clyde M. Warner, met with your President, Dr. John T. Moore, the Secretary, Dr. Walter A. Coole, the District Counselor, Dr. Judson L. Taylor, and the legal representative of Dr. Raymond E. Selders, Dr. J. C. Alexander, November 21, 1938.

The meeting was called to order and a very free and frank discussion was held regarding the Dr. Raymond E. Selders matter, which has been pending in our Society for some time.

The conclusion reached by the Board of Censors was agreed to by all those present, that due to the various legal questions involved in the case, the Board of Censors recommends to the Society:

That the charges of unethical practice against Raymond E. Selders, now lying on the table, be brought before the Society and dismissed without prejudice.'

Motion was made by Dr. John Zell Gaston, seconded by Dr. William E. Priester, and duly carried, that the resolution of the Board of Censors be adopted.

Dr. Tailey presented the following resolution of the Board of Censors:

'That the check of $24 tendered the Society by Dr. Raymond E. Selders to pay his 1938 dues be accepted.'

Motion was made by Dr. B. T. Van Zant, seconded by Dr. Dawes, and carried, that the resolution of the Board of Censors be adopted.

Letter of transfer from the Harris County Medical Society was read by the Secretary from Dr. Raymond E. Selders.

Motion by Dr. A. T. Talley, seconded by Dr. Priester, that the letter of transfer be voted upon at the next regular business meeting, November 30, 1938. Motion carried."

Gov. Ex. 564 is the minutes of the regular business meeting of the Harris County Medical Society on November 30, 1938.

"Unfinished Business."

"'Voting on the application of Dr. Raymond E. Selders for transfer. Vote by ballot 52 yes, 42 no that Dr. Selders be granted a transfer.'"

Gov. Ex. 585 which purports to be a letter from Dr. Thomas E. Neill, President, District Medical Society, to the Superintendent of Homeopathic Hospital, dated April 23, 1938, was offered in evidence. The Court's attention was called to the fact that Dr. Neill's signature is already in evidence and the Court was asked to exercise its discretion and compare the signatures. The letter was produced in response to a subpoena duces tecum by Homeopathic Hospital. Defendants objected on the grounds that it was incompetent, irrelevant and immaterial and no conspiracy had been shown. Objection overruled and exception noted.

Gov. Ex. 585 was received in evidence and read to the jury, as follows:

"DEAR MRS. TREASURE:

The Executive Committee of the Medical Society of the District of Columbia believes that a joint meeting of the Presidents of the Boards of Directors of the several hospitals, together with their Chairman of the Medical Staffs, and Superintendents, and a few members of the Medical Society, for a round table discussion of our common problems, may result in a fuller and better understanding, especially in preserving the best professional care for our community.

You are, therefore, cordially invited to be present on Tuesday, April 26, 1938, at 8 P. M., in the Library of the Medical Society Building, 1718 M Street, N. W. This meeting is entirely for our mutual understanding and not for publication.

Very sincerely yours, Thos. E. Neill, M.D., President."

GRACE BRENNEN, a witness for the United States.

Direct examination.

By Mr. Lewin:

I am secretary to Dr. Jerome Crowley, and was such in July, 1938. I know his handwriting. The answers to ques-

tions 8 and 11 on Gov. Ex. 307 are in the handwriting of Dr. Crowley, but the rest of the handwriting is not that of Dr. Crowley.

Thereupon the Government offered in evidence Gov. Ex. 307, requesting a comparison with the handwriting other than Dr. Crowley's appearing on Gov. Ex. 307, with the handwriting of the defendant Warfield on Gov. Ex. 308. This offer was objected to on the grounds that it was incompetent, irrelevant, and immaterial, and that no conspiracy had been proven. These objections were overruled and an exception noted.

(Gov. Ex. 307 was received in evidence.)

HARRIET AUSTIN, a witness for the United States.

Direct Examination.

By Mr. Lewin:

I live in Chevy Chase, Maryland. In September, 1938, I lived on 44th Street, in Foxhall Village. I was not entitled to privileges in Group Health until after an accident. The accident spoiled my memory. I guess the accident happened in September of 1938 on Pennsylvania Avenue. I have a daughter named Edwina Avery who was a member of Group Health. I was dependent on my daughter at the time of the accident. After the accident I was taken to Emergency Hospital, put to bed, and examined. I don't know very much about it. I didn't receive any treatment I sent word to my daughter, Mrs. Avery, who came right down with her husband. Shortly after they came I was taken in an ambulance from the hospital.

Cross-examination.

By Mr. Leahy:

I can't give the date of the accident. My memory was destroyed at that time. I don't remember the name of anybody at Emergency Hospital. One person examined me but I don't know very much about it anyway, and I didn't know much about what happened.

EDWINA AVERY, a witness for the United States.

Direct examination.

By Mr. Kelleher:

I am Mrs. Austin's daughter. I was employed in the Department of Agriculture in 1938, and was a member of Group Health. Under my membership my mother was entitled to the benefits of the organization. On September 7, 1938, I received a telephone call about 6:30 P. M. and as a result went down to the Emergency Hospital and found mother in the intake department.

I talked with the interne at Emergency as soon as I found the one who had examined mother and found that he had examined her, and that he had stated that there were no broken bones he could find; that there was no concussion, but that she was suffering badly from bruises and cuts. I immediately asked to have my own doctor brought in. This man said that there was another interne who wished to see her, a Dr. Harris, and I said, "How soon?" Naturally I was very much upset. The doctor said it would probably be an hour, that the doctor was already in the hospital, but that he had to eat his dinner. I wasn't anxious to wait an hour to have my mother further examined, and continued to insist on having my own doctor come in. He said I could phone him. I immediately went to the phone, to which I was directed, and called Dr. Selders. I asked Dr. Selders to come immediately, and found out that he could not, and that I should go to the hospital authorities to make arrangements for his coming. I immediately went to the superintendent's office, was told that it was after hours, and that the general superintendent was not there. I was referred to the night superintendent, a doctor named McKeever. I went to see Dr. McKeever and asked to have my doctor brought in. I explained that the case was an emergency case, and that my mother was at that time in the intake department, having no attention whatsoever, except that one interne had looked her over.

Dr. McKeever wanted to know who my doctor was. I said, "Dr. Selders." He said he didn't know him. I explained that he was Dr. Raymond E. Selders, the Medical Director of Group Health, of which I was a member.

A. * * * He looked in a file over in the corner and came back and said that Dr. Selder's name was not in their

list. I said, "Just what does that mean?" He said that Dr. Selders would not be admitted to their hospital. I said, "Well, my mother——" Just then my husband came in and heard that remark and said something. I spoke up and said, "I have explained this to Dr. McKeever. This is an emergency and my mother is an emergency case, and it is my understanding in emergencies we can have our own doctor in."

Dr. McKeever said he was sorry, it didn't make any difference whether it was emergency or not. Dr. Selders couldn't come in. I said, "But I thought the whole point in this controversy was that we were to have the free choice of physicians"; that he was my surgeon and I wanted Dr. Selders. He said, "I am sorry." My husband said, "Perhaps he is working under orders." I said, "Is that so?" He said, "Yes." I said, "Perhaps it would be good for me to go to the superintendent." He said, "No, it wouldn't do any good to see him; the orders would be the same." I said, "I want my surgeon to look over my mother." The doctor said he could do so in the intake department but as far as giving any orders or doing any work, treating her, it would not be permitted. I said the best thing I could do would be to find out from Dr. Selders what he would recommend.

Q. Before you leave that conversation, did Dr. McKeever suggest any other doctor?

A. Yes, he did. He went over to the corner when I said this about the free choice of physicians. He said, "We have a whole list of doctors here. You can have your free choice." I said, "I suppose I will go over and close my eyes and go down the list." He said, "You can move your mother to any hospital in the city if you wish."

I said, "Could we be assured we would receive any different treatment in any other hospital?" He said, "No". I called Dr. Selders again at that time.

After talking with Dr. Selders I went back to see my mother and found her in a very high state of—in fact, near nervous collapse, because of the treatment she had been subjected to. I went back and talked again to the interne and found that this Dr. Harris had examined her in the meantime, while I was talking to the superintendent, and I talked to both these doctors and they both assured me there were no broken bones and, so far as they could see, no concussion,

although they could make no definite statement on that, but because of conditions there I made the decision to move my mother that night. I moved her as soon as I could get an ambulance to take her home when she was examined by her own surgeon. She got home between 9 and 10 o'clock.

Cross-examination.

By Mr. Leahy:

I am still employed by the Agricultural Department. I joined G.H.A in February of 1938. At present I am one of the Board of Directors of G.H.A. I have been on the board for a little over a year. The accident occurred early in September, late in the evening. The accident happened about 5:19 and they called me at 6:35 p. m., according to my maid. When the girl at the hospital reached me I was told mother had been brought in at 5:30 p. m., and the girl explained that they had had difficulty or something. Immediately on receipt of the call I went down to the hospital and found that an interne had examined mother and said he wanted Dr. Harris to look over mother. While I was talking to Dr. McKeever for about 20 minutes, Dr. Harris examined mother, and I was informed that there were no broken bones or anything of that kind. I knew Dr. Selders as one would know their physician. On numerous occasions I have discussed matters with Dr. Selders. I was informed when I talked with Dr. Selders over the phone that I had the right to have my own doctor in an emergency. I didn't look at the list of doctors on the hospital staff which Dr. McKeever called to my attention. I talked to Dr. Harris when I returned to the intake department and after being informed that there were no broken bones but serious cuts and bruises I obtained an ambulance and took mother home. Dr. Selders didn't see mother that evening but Dr. Halstead came.

Louis F. Thompson, a witness for the United States.

Direct examination.

By Mr. Kelleher:

In March 1938 I was employed with the Home Owners Loan Corporation and I worked there with Mr. Berry, being

temporarily assigned to assist in setting up the records of Group Health, and worked with Mr. Berry in doing that. I signed Mr. R. T. Berry's signature to Gov. Exs. 463 to 468, inclusive, and placed my initials, "L. F. T." on each letter. As there were a pile of those letters printed Mr. Berry signed part and asked me to sign the others.

KENNETH D. ARMSTRONG, a witness for the United States.

Direct examination.

By Mr. Lewin:

In May of 1929 I was notary public in the District of Columbia and took the affidavit of the applicant appearing on Gov. Ex. 586. The applicant appeared before me and signed the exhibit and was Thomas E. Mattingly.

Cross-examination.

By Mr. Leahy:

I know the applicant personally and have known him since 1929, but I don't have any independent recollection as to whether the applicant signed this particular signature.

Thereupon the Government offered in evidence Gov. Ex. 587. To this the defendants objected on the grounds that no conspiracy had been proven, showing Dr. Mattingly to be a party thereto, that the letter was incompetent, irrelevant, and immaterial, and hearsay as to the other defendants, and the letter is a statement of a citizen to the Grand Jury and not admissible as evidence in this case. These objections were overruled and exception was allowed.

(Gov. Ex. 587 was received in evidence.)

DR. SAMUEL H. ROGERS, a witness for the United States.

Direct examination.

By Mr. Lewin:

I am president of the Board of Directors of Casualty Hospital and was such in 1938. Gov. Ex. 588 was produced

from the files of Casualty Hospital, as was Gov. Ex. 589. Gov. Ex. 590 is on a Casualty letterhead and is a report of the Credentials Committee dated June 13, 1938 signed by the committee. I know the signatures of the signers, Dr. Young and Dr. Taylor; but I am not familiar with the signature of Dr. Magruder MacDonald but believe that is his signature. Gov. Ex. 591 is signed by Dr. J. Burr Piggott, acting chief of staff on June 16, 1938. It was customary in the ordinary course for the Medical Staff of Casualty Hospital to have meetings and to keep minutes thereof. Dr. J. Rogers Young was secretary of that staff in 1938. I cannot identify Dr. Young's signature to Gov. Ex. 592, 593, and 594, but we have every reason to believe that those exhibits are minutes produced from the files of Casualty Hospital and kept in the ordinary course by the Medical Staff. I identify what purports to be a roster of the Medical Staff and the committees of Casualty Hospital in 1938, but I am not familiar enough with the list to know everyone on the committees, but I would say it was a correct list. The chief of staff of Casualty Hospital in the middle of the year 1938 was Dr. Piggott. Before Dr. Piggott became acting chief, Dr. J. T. Lewis was chief of staff. Dr. J. T. Lewis left Casualty Hospital in the middle of 1937. Dr. Lewis was chief of staff until the middle of 1937, left the hospital and went to Panama, never returning to the States as he died in Panama. I don't know who succeeded Dr. Lewis on the Hospital Committee of the District Medical Society. I was probably informed at some time by Dr. Young that he was a member of the Hospital Committee of the District Medical Society, but I don't know when, and I don't know whether or not Dr. Young succeeded Dr. Lewis on that committee.

Cross-examination.

By Mr. Leahy:

Gov. Exs. 592, 593, and 594 are the minutes of the Medical Staff. On one or two occasions I attended such meetings for a short while. I never saw anyone taking down any of the meetings stenographically. I have never read the minutes and all I know is that what appears in the papers is that they are signed by J. Rogers Young. The Credentials Committee is the one that passes on the membership of the staff. The Executive Committee probably

acts for the staff during the interim in which they have no meeting. The Credentials Committee considers applications for membership to the staff, reports to the Medical Staff, and that staff in turn reports to the lay Board of Directors of the hospital, and that lay Board of Directors finally appoints the staff. I am not familiar enough with Dr. MacDonald's signature to identify it. The Interne Committee has charge of internes and the Record Committee sees that the records are kept properly.

DR. FRANCIS X. RICHARDSON, recalled as a witness for the United States.

Further direct examination.

By Mr. Lewin:

I resigned from my position with Group Health on July 15, 1938, and turned in a written resignation on that date. The witness was then asked his immediate reason for resigning from Group Health. The defendants objected to this on the ground that it was incompetent, irrelevant, and immaterial, and hearsay. These objections were overruled and exception was allowed. The witness answered: I resigned from Group Health because I was afraid I might lose my hospital privileges.

Cross-examination.

By Mr. Leahy:

I went to work for Group Health in the year 1937 and had privileges in Sibley, Providence, and Garfield Hospitals, and I had them on July 15, 1938.

The Government then made the following offers: Gov. Exs. 595 through 604, 588, 589 and 591 were offered in evidence against all defendants. Gov. Exs. 590, 592, 593 and 594 were offered in evidence against the defendant Warfield. Gov. Exs. 466, 467, 468, 465, 463, 464, 462 and 304 were offered in evidence. Defendants objected on the grounds that they were incompetent, immaterial, and irrelevant, that no conspiracy had been shown and they are hearsay. Special objection to Gov. Exs. 462 to 468, inclusive, on the ground that they are self-serving statements by an

employee of an interested party, not a defendant. Special objection to Gov. Ex. 591 that there is no proof that Dr. Selders ever received it. Gov. Ex. 591 is from the files of Group Health. Special objection to Gov. Exs. 592, 593 and 594 on the grounds that they were not properly proven. Objections overruled and exceptions allowed.

(Gov. Exs. 595 through 604, 588, 589, 591, 590, 592, 593, 594, 466, 467, 468, 465, 463, 464 and 462 were received in evidence.)

Gov. Ex. 605, a letter sent by Mr. Kirkpatrick, was offered in evidence. Defendants objected on the ground that it was incompetent, immaterial, irrelevant and hearsay. Objection overruled and exception allowed.

(Gov. Ex. 605 was received in evidence.)

Mr. Kelleher: I would like to make this offer of proceedings and also to correct the record. I think the simplest way to do it is to read a statement into the record. I have made a copy for the other side and have given it to them, and will give a copy to the court reporter, but I would like to make the statement in open court if I may.

The Court: Very well.

Mr. Kelleher: With reference to Government Exhibit 3, which is the proceedings of the House of Delegates of the American Medical Association for 1938, the Government has offered, and it is our understanding that the court has received, so much of the report of the Secretary as is marked in red pencil on pages 5 and 6, together with a portion of the Report of the Reference Committee on Reports of Board of Trustees and Secretary, marked in red pencil and appearing on page 58, and the official action with respect to this report, appearing on page 60 and marked in red pencil.

It is also our understanding that the court has received in evidence the portion of the Report of the Board of Trustees, marked in red pencil on pages 7, 8, 29, 30 and 31 together with the portion of the Report of the Reference Committee on the Reports of the Board of Trustees and Secretary appearing on pages 58, 59, and 60, marked with red pencil, and the action of the House of Delegates on the Report of the Reference Committee, appearing on page 60 and marked with red pencil. Since the report of the Board

of Trustees on the Bureau of Medical Economics was referred to the Reference Committee on Legislation and Public Relations, the portions of the report of that committee appearing on page 76 and marked in red pencil have been offered and received, together with the action of the House of Delegates on the report, appearing on page 77 and marked in red pencil.

Mr. Leahy: Can you identify that so that we can check it?

Mr. Kelleher: June 13 to 17, 1938. It is Exhibit 3.

Now I come to Exhibit 5, which is the report of the proceedings of the House of Delegates in 1931.

The portion of the Report of the Board of Trustees, marked in red pencil and appearing on page 19 of Exhibit 5, has been offered and received in evidence, together with the portion of the Report of the Reference Committee on Reports of the Board of Trustees and Secretaries, appearing on page 35 and marked with red pencil, and the action of the House of Delegates approving the Report of the Reference Committee, appearing on page 35 and marked with red pencil.

It is also our understanding that the portion of the Report of the Judicial Council, appearing on page 24 and marked with red pencil, has been offered and received in evidence, together with the portion of the Report of the Reference Committee on Rules and Order of Business, appearing on page 40 and marked in red pencil, and the action of the House of Delegates on the latter report, appearing on page 40 and marked in red pencil.

Exhibit 6 is the report of the proceedings of the House of Delegates for 1932. It is our understanding that the portion of the Report of the Board of Trustees appearing on pages 15 and 16 and marked with red pencil, together with the portion of the Report of the Reference Committee on Reports of Board of Trustees and Secretary, appearing on page 46 and marked with red pencil, and the action on the latter report by the House of Delegates, appearing on page 48 and marked in red pencil, has been offered and received in evidence.

We now offer the portion of the report of the Reference Committee on Medical Education appearing on page 40 of Exhibit 6.

The Court: First, Mr. Kelleher, as to the statement which you have read as to your understanding of what action was

taken on this evidence that was offered, that was back in the early part of the trial, as I recall, and I cannot be certain about it. I suggest that counsel take this statement before our next session and check the record up. In the absence of any indications from you of any disagreement on counsel's statement I will assume that it is correct.

Now you may proceed.

Mr. Kelleher: We now offer, which has not been offered before, from Exhibit 6 the portion of the report of the Reference Committee on Medical Education, appearing on page 40, marked in red pencil, and the action of the House of Delegates on the report of that committee, appearing on page 41 and marked in red pencil.

I am sorry I have confused things. That portion, that is, the report of the Reference Committee on Medical Education and the action of the House of Delegates has been received in evidence, according to our understanding.

Government's Exhibit No. 102, the report of the proceedings of the House of Delegates for 1933—from that report, in addition to what has already been offered and received, we now offer in evidence the resolution of Mundt, appearing at page 50 of Exhibit 102, together with the Report of the Reference Committee on the Mundt Resolution, appearing at page 56, and the action of the House of Delegates on the report of the Reference Committee appearing on page 57, all of which are now marked with red pencil.

The Court: Do you want to read those?

Mr. Kelleher: No, your Honor. We just want them in the record.

Government Exhibit 8 is the report of the proceedings of the House of Delegates for 1934. We believe that the transcript incorrectly shows that the Government offered the portions of the Report of the Special Committee appearing on pages 53 and 54. The Government offered only the portion of the report of that committee appearing on page 55 and now marked in red pencil, together with the action of the House of Delegates dealing with the report, appearing on page 55 and marked with red pencil. The record correctly shows, on page 855, that this portion of the report and the action of the House of Delegates thereon were admitted in evidence.

I would like to make an offer of the proceedings of the House of Delegates for 1935, 1936 and 1937, and I will just

proceed with my statement subject to check later by counsel. I am going to read a statement of what we offer.

Government Exhibit 606 for identification is the record of the proceedings of the House of Delegates for 1935, and I now hand it to counsel for the defendants.

The Government offers in evidence the following portions of Exhibit 606: the portion of the report of the Judicial Council appearing on page 30 and marked with red pencil; so much of the Report of the Reference Committee on Reports of Officers, to which the Report of the Judicial Council was referred, as is marked in red pencil on pages 40 and 41 of the Proceedings; the action of the House of Delegates upon that portion of the Report of the Reference Committee, marked as aforesaid, appearing on page 41 and marked in red pencil; the portion of the Report of the Council on Medical Education and Hospitals, appearing on page 31 and marked in red pencil; the portion of the Report of the Reference Committee on Medical Education appearing on page 37 and marked in red pencil; the action of the House of Delegates upon the report of said Reference Committee, appearing on page 38 and marked in red pencil; that portion of the Report of the Reference Committee on Medical Economics appearing on page 46 and marked in red pencil; the action of the House of Delegates upon the aforesaid portion of the report of said Reference Committee, appearing on page 47 and marked in red pencil; that portion of the Special Report of the Bureau of Medical Economics appearing on pages 56, 59, and 60, and marked in red pencil; that portion of the Report of the Reference Committee on Medical Economics appearing on page 63 and marked in red pencil, and the action of the House of Delegates on the said portion of the report of said committee, appearing on page 64 and marked in red pencil.

The Government now offers in evidence the proceedings of the House of Delegates for 1936 which have been identified as Government Exhibit 607. I now hand that to counsel for the defendants.

The Government offers in evidence the following portions of that exhibit:

Those portions of the Report of the Board of Trustees appearing on pages 7, 20, and 23, and marked in red pencil; that portion of the Report of Reference Committee on Legislation and Public Relations, to which the portion of the

Report of the Board of Trustees appearing on page 23 was referred, appearing on page 51 and marked in red pencil; those portions of the Report of the Judicial Council appearing on pages 36 and 37 and marked in red pencil; those portions of the Report of Reference Committee on Reports of Officers, to which Reference Committee the Report of the Judicial Council was referred, appearing on pages 47 and marked in red pencil, and the action of the House of Delegates on said portions of the Report of said Reference Committee, appearing on page 48 and marked in red pencil; that portion of the report of the Council on Medical Education and Hospitals, appearing on page 38 and marked in red pencil; that portion of the Report of Reference Committee on Medical Education appearing on page 45 and marked in red pencil and the action of the House of Delegates on said report, appearing on pages 45 and 46 and marked in red pencil; that portion of the Proceedings entitled "Membership in County and State Associations for Members of Staffs of Hospitals," appearing on page 60 and marked in red pencil.

One more offer, your Honor. The Government now offers in evidence Exhibit 608, which is the proceedings of the House of Delegates for the year 1937. The Government offers the following portions of said proceedings:

The portion of the Report of the Board of Trustees appearing on pages 22, 23, 24, and 25, and marked in red pencil; that portion of the Report of Reference Committee on Legislation and Public Relations, appearing on page 68 and marked in red pencil; the action of the House of Delegates on that portion of the report of said Reference Committee appearing on page 68 and marked in red pencil; that portion of the report of the Judicial Council appearing on pages 39 and 40 and marked in red pencil; the Report of Reference Committee on Amendments to the Constitution and By-Laws, appearing on page 74 and marked in red pencil; that portion of the Report of the Council on Medical Education and Hospitals, appearing on page 41 and marked in red pencil; that portion of the Proceedings entitled "Proposed Amendments to the Principles of Medical Ethics," appearing on page 53 and marked in red pencil; that portion of the Report of Reference Committee on Amendments to Constitution and By-Laws, appearing on page 64 and marked in red pencil, and the action of the House of

Delegates on said portion of the report of said Reference Committee, appearing on page 65 and marked in red pencil.

The Court: I will just leave those matters in the hands of counsel for the defendants.

Thereupon the Government read to the jury Gov. Ex. 587, theretofore received in evidence over the objection and exception of the defendants, with the instruction by the Court that the letter was admissible only against the writer, as follows:

Mr. Lewin: This is a letter from the defendant Thomas E. Mattingly addressed to William R. Beall, Foreman, Special Grand Jury, dated November 13, 1938 (reading):

"GENTLEMEN OF THE GRAND JURY:

I hope that you will not think that this second communication implies any fear on my part that my first letter did not or will not get just consideration and appropriate action. Rather it is written to provide you gentlemen with specific data, whereby I hope to persuade you, (even should the Public Prosecutor object) that you, as a fact finding body, could not in justice, honesty or fair play ignore my plea as a reputable physician, a native son and a life long resident of the District of Columbia, for a hearing. I purposely add the comment, 'even should the Public Prosecutor object,' because I am fearfully of the belief that he will use every device at his command to keep you from learning the whole truth, undistorted by political prejudice and intellectual dishonesty. It is my personal opinion that if the Public Prosecutor had knowledge or even a well founded suspicion, that the testimony of a witness subpenaed before you, might weaken or break his case, he would not be above the legalistic trickery of attempting to persuade you, 'that the status of the witness had already been investigated and such testimony as they might be able to give, is both irrelevant and inconsequential.'

Because I have an abiding faith in your civic honesty, your democratic concept of justice and your staunch, incorruptible courage, I promise if allowed to appear before you and under your sovereign protection, to acquaint you with what is in the hearts and minds of this community of physicians which has motivated us to do as we have done. I am sure you will agree, that before you can with honesty and conscience indict us, you must make every effort to ascertain the true reasons behind this concerted but spontaneous

action of a preponderant majority of the physicians of Washington. Only when and if you have weighed and considered those motives, can you return a true and uncorruptible verdict. Because I trust you, have faith in you, I promise if given an opportunity to appear before you to truthful answers (sic) without any evasion or reservation whatsoever.

That you might know be[illegible]nd any reasonable doubt and despite any objections on the part of the Public Prosecutor that my testimony is both relevant and consequential, I frankly admit the following acts of professional leadership, successfully accomplished.

1. I personally raised the question and forced the issue of compelling wavering or undecided hospitals to deny courtesy privileges to staff members of G. H. A. I likewise successfully argued the point in an Executive Session of the Medical Society that we had ample precedent to discipline any member of our Society found guilty of secretly aiding G. H. A. in obtaining its objectives by subterfuge. The threat of this action alone enjoined the clandestine cooperation of several members suspected of such cooperation, though it must be noted that these members were never openly named because such suspicion we had, was hearsay evidence only, and as such was not admissible.

2. I successfully used my position as a member of the Medical Council to prevent Dr. Raymond Selders from receiving courtesy privileges at Sibley Hospital.

3. I was the author, sponsor and lone defender of the defeated substitute motion which would have punished Dr. Scandiffio with suspension, instead of expulsion from the Medical Society.

Obediently, Thomas E. Mattingly, M. D."

May it please the court, with the reservation of the right to introduce at the next session such items of evidence as we may have overlooked, the Government at this time rests.

The Court: Have there not been some letters and papers that have gone in recently that ought to be read?

Mr. Lewin: No; I do not think so. Lots of them were cumulative things that we did not expect to read.

The Court: I thought if you did want to read them I would like to take the time to do it now.

Mr. Lewin: No, your Honor. We do not plan to read them unless counsel for the defendants want them read.

Photostatic copies of certain portions of the minutes of the District Medical Society and its Executive Committee were marked Gov. Ex. 609.

FRED O. COE, recalled as a witness for the United States.

Further direct examination.

By Mr. Kelleher:

I was secretary of the executive staff of Georgetown University Hospital during 1938. My signature is on Gov. Ex. 610.

Gov. Ex. 610 was offered in evidence. The defendants objected on the ground that it was incompetent, irrelevant, and immaterial, and hearsay, and that it was not admissible because no conspiracy had been proven involving the Georgetown University Hospital. These objections were overruled, exception allowed.

(Gov. Ex. 610 was received in evidence.)

The Government offered in evidence a letter dated December 20, 1937, from Dr. Leland to Saville, marked Gov. Ex. 261. This letter was objected to on the ground it was incompetent, irrelevant, and immaterial. The Court overruled these objections and allowed the defendants an exception.

(Gov. Ex. 261 was received in evidence.)

HELEN E. SWANSON, a witness for the United States.

Direct examination.

By Mr. Kelleher:

I am employed as secretary to the Medical Director, Dr. Bloedorn, at George Washington University Hospital. I prepared a roster of the committees and of the staffs of the hospital. Gov. Ex. 612 is the roster of the Committee

on Hospital Privileges, 1937 and 1938, of the hospital. Gov. Ex. 613 is the schedule of the staff services for 1937, for the hospital. Gov. Ex. 613-A shows the schedule of staff services for 1938, and shows the courtesy staff on July 1, 1937 through June 30, 1938. The pencilled words "yes" or "no" opposite each of the typewritten names is a tabulation showing the members of the Medical Society and members of the American Medical Association who were members of the staff of the hospital. The notation "50 not members of D. C. Medical Society" means that at that time 50 of the members of the staff were not members of the District Medical Society. The tabulation in pencil, as shown in the two pencil columns on the left-hand side of the page shows which of the doctors on the staff of George Washington University were members of the Medical Society during 1937 and 1938.

Cross-examination.

By Mr. Leahy:

I typed Gov. Ex. 612 from information furnished me by Dr. Bloedorn, the Medical Director of the staff. The Committee on Hospital Privileges constitutes the board which determines whether or not a doctor has hospital privileges, that is the right to practice his profession in the hospital. If a doctor doesn't have privileges he doesn't have the right to practice in the hospital. Gov. Ex. 614 shows the attending physicians. The tabulation of membership in the Medical Society and the American Medical Association appearing in pencil on Gov. Ex. 614 was prepared in the latter part of January or first part of February, 1941. There is nothing to show how long any one of the doctors had been a member of the District Medical Society. The information as to membership in the American Medical Association was obtained from its Directory, and the information on membership of the Medical Society directly from the Society. Gov. Ex. 613 shows the staff service of the hospital and the teaching staff of the medical school, meaning the general staff and not the courtesy staff.

The Government offered in evidence Gov. Exs. 612, 613, 613-A, and 614. These were objected to on the ground of being incompetent, irrelevant, and immaterial, and hearsay, as the hospital had not been proven to be a party to any conspiracy. The objections were overruled, exception was allowed.

(Gov. Exs. 612, 613, 613-A, and 614 were received in evidence.)

The Government offered in evidence two letters of Dr. Conklin dated July 29, 1937, the first one addressed to "Dear Doctor" and the second one "To the Superintendent," and a third letter from Dr. Conklin to the chief of staff of George Washington University Hospital, dated December 2, 1937, identified as Gov. Exs. 615, 616, and 617, respectively, and Gov. Exs. 351, 365, 383, 384, 392, 442-A, 478 and 479. These letters were objected to on the ground that they were incompetent, irrelevant, and immaterial, and hearsay These objections were overruled, and exception was allowed.

(Gov. Ex. 615, 616, 617, 351, 365, 383, 384, 392, 442-A, 478 and 479 were received in evidence.)

The sections outlined in red in Gov. Exs. 606, 607 and 608 were offered in evidence. The defendants objected on the ground that the same were incompetent, irrelevant, and immaterial, and hearsay as to all defendants except the American Medical Association. These objections were overruled, an exception was allowed.

(Said sections of Gov. Exs. 606, 607, and 608 were received in evidence.)

Thereupon the following occurred:

Mr. Kelleher: I think I should also ask whether counsel has checked the changes which I suggested, or the corrections which I suggested, as to Exhibits 3, 5, 6, 8, and 102, which are the other proceedings which we offered.

Mr. Richardson: What was the error in those?

Mr. Kelleher: It is in that memorandum. In some instances, the wrong portion was entered in the record, and in other instances only a portion of it was shown. In all instances except one the record clearly shows what our offer was, and in one instance we made another offer. It is all shown in the memorandum which I gave you.

The Court: Have you checked that, gentlemen?

Mr. Burke: I have read the books, and the part that is marked in red pencil is a part of the records of the House of Delegates. That is all I can say about it.

The Court: The question is whether or not they are in evidence, or, if not in evidence, is there any objection to them? I want to get this record closed up.

Mr. Leahy: Can we not have it understood that we have read those sections of those minutes or reports, whatever we wish to call them, of the House of Delegates and we will consider that those marked in red outlines have been offered in evidence and as to them we have no special objection—no objection other than the general objection?

The Court: Very well.

Mr. Allen: If your Honor please, Exhibit 480 was identified by Mr. Sandidge and received in evidence as to certain pages, pages 30 and 31, as the Medical Staff of the hospital. It later appears that those pages do not constitute all the staff of that hospital, and I now offer in addition pages 15, 16, 17 and 18, which constitute the remainder of the Medical Staff.

The Court: Very well. They will be received. I suppose, if that is all it is, there is no objection to it. I have been admitting such exhibits as to all hospitals.

Mr. Leahy: No special objection.

The Government formally rested.

Thereupon each and all of the defendants moved the court as follows:

To direct the jury in the above entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants.

To direct the jury in the above entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining Group Health Association, Inc., in its business of arranging for the provision of medical care and hospitalization to its members and their dependents on a risk sharing prepayment basis."

To direct the jury in the above entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining the members of Group Health Association, Inc., in obtaining, by cooperative efforts, adequate medical care for themselves and their dependents from doctors engaged in group medical practice on a risk sharing prepayment basis."

To direct the jury in the above entitled cause to return a verdict of not guilty as to each and all of the aforesaid

defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining the doctors serving on the medical staff of said Group Health Association, Inc., in the pursuit of their callings."

To direct the jury in the above entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining doctors (not on the medical staff of Group Health Association, Inc.) practicing in the District of Columbia, including the doctors so practicing who are made defendants herein, in the pursuit of their callings."

To direct the jury in the above entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining the Washington hospitals in the business of operating such hospitals."

And for cause therefore defendants state that the testimony adduced on behalf of the prosecution herein is insufficient to support a verdict of guilty in so far as the above charges are concerned.

Defendants' motions for directed verdicts were granted as to the Harris County Medical Society, Washington Academy of Surgery, Leon Alphonse Martel, and Joseph Rogers Young. As to these defendants a verdict of "not guilty" was directed and returned. Defendants' motions were denied as to the remaining defendants and an exception was allowed these defendants.

DEFENDANTS' TESTIMONY IN CHIEF

FRANCIS J. EISENMAN, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I am superintendent of Garfield Hospital. In accordance with the rules and regulations of the hospital a record is kept of each patient. These records are kept under my supervision. On arrival of a patient a record is kept on the

wall during the period while the patient is in the hospital. When the patient leaves, the record then goes to the record room and the records are made contemporaneously with the treatment of the patient, and reflect the condition of the patient until the patient is discharged from the hospital. Then the record is checked, completed and filed away. I identify as a record kept in the regular course of business of Garfield Hospital the clinical record of Miss Sara Abbott, Def. Ex. 1. I identify as a record kept in the same fashion the clinical record of Miss Elizabeth Tew, Def. Ex. 2.

Cross-examination.

By Mr. Lewin:

Dr. Holtzman was the resident in medicine at Garfield a year or two ago. The records show how long the patient was in the hospital. Miss Sara Abbott was in the hospital from January 27, 1938, to February 17, 1938, 21 days. The next record discloses that Miss Tew was in Garfield Hospital from February 26 to February 26, 1938, or a part of a day. Dr. Kreutzberg was the resident in medicine in Garfield Hospital. Dr. Dugan was the assistant resident in surgery at the time Miss Tew was in the hospital.

B. Brent Sandidge, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I am superintendent of Emergency Hospital. The records of Emergency Hospital are kept on the floor where the patient is hospitalized until discharged, then they are sent to the historian for filing in the hospital patients' record room. The records are made contemporaneously and kept up to date as the notations are made by the doctor of the patient's condition. I identify a folder as containing a record which is called a history of a former patient at Emergency Hospital named Sara Abbott, Def. Ex. 3. I identify a card and the paper attached to it, as two records from the hospital emergency department, kept in accordance with the rules and regulations of the hospital, with the entries thereon being made contemporaneously with the

facts they purport to record. The card and record is kept in the emergency department and shows the notations made of the treatment and condition of the patient, the nature of the injury, and certain information obtained prior to the time the patient is hospitalized, if the patient is hospitalized. The emergency room is the accident operating room, and the nurses, doctors and residents are kept there to treat emergency cases that are brought to the hospital when the patients are first brought in, prior to a definite diagnosis, and given emergency treatment, if needed. Any case brought into the emergency room is classified as an emergency case whether the injury is serious or not. If the case goes through the emergency room it is returned simply for record as an emergency case, and, in some instances, the cases are not really what you might call an emergency, but it comes from that department and the record is made there. The records are then filed. I recognize a card dated September 7, 1938, of H. A. Austin, as an official record of the hospital, identified as Def. Ex. 4; the second piece of paper is a formal release, releasing the hospital of any responsibility which may follow and be occasioned by the patient leaving the hospital against the judgment of the doctor. Under the rules and regulations of the hospital in force at the time in which the particular release was executed, if, in the judgment of the doctor and attendants in the emergency room, the patient should remain longer and for some reason does not and leaves on his own accord, the doctor and nurses are instructed to obtain a formal release signed by the patient as a release of the hospital from any responsibility, and that such is the character of this release, and it is one of the hospital records. The name on the card is "Mackowiak." He has been called into selective service in a region near Baltimore, Maryland. The other name is "Gerber," who was the chief resident at the hospital on September 7, 1938, and he is now at Sinai Hospital in New York City. Fry, whose name appears on the record, is still at Emergency. In 1938 the night superintendent, or night office man, was a Mr. McKeever, whose general duties were to room patients, to try to adjust arguments or difficulties, or to call some official at his home for decision, if necessary. On September 7, 1938, the list of the doctors on general and courtesy staffs of the hospitals was kept in the admitting office. The courtesy file has all of the doctors' names listed thereon and indicates the kind of service they are permitted

to perform in the hospital with the approval of the officials of the hospital. Mr. McKeever is not a doctor, but a layman, and is now on the high seas in service of the Naval Reserve.

MILLINA M. REALINI, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I am supervisor of medicine and surgery at Sibley Hospital and have been since January 1938. My duties are to make the rounds and visit every patient; watch the nurses and see that they correctly carry out the doctors' orders. I identify Def. Ex. 7 as the admission card made out in my handwriting. As the admission nurse was going off duty when the patient signed in it was up to me to admit the patient, as night supervisor at the time. Def. Ex. 7 is the admission card and one of the records of the hospital. I admitted the patient Charles Hardin, whose name appears on the card. He was admitted the hospital on June 19, 1938, at 11:45 p. m. On admission he was accompanied by his brother-in-law and his wife. He was booked for an operation when the admitting nurse went off, and the admitting nurse told me that Dr. Bachrach was to be the surgeon and that the patient would be in in time as the operation schedule was for 11:45 p. m. The information on the card was obtained by me from the wife of Mr. Hardin. He came into the hospital and was sent to the floor immediately, and since the operation was booked for 11:45 p. m. and he came in at that time he was taken to the floor immediately by me. I then returned to the admitting office and filled out his admission card. On returning, the patient's brother-in-law asked and obtained permission to use the telephone, and called a physician. Mr. Booth personally handed the phone to me and said, "The doctor wants to speak to you." I took the phone and the party on the line said he was Dr. Selders and asked if he could come in and operate on Mr. Hardin. I told Dr. Selders that I was sorry, but that Mr. Hardin already had a doctor, Dr. Bachrach, and then the witness testified as follows:

Q. Tell us now as best you can what was said on the telephone that evening?

A. Well, Dr. Selders wanted to know if he could come in to operate on Mr. Hardin and I said Dr. Bachrach was the attending physician. He told me it was his patient. I said, "Well, I am sorry, Mr. Hardin has a doctor, and there isn't anything I can do about it." He said, "He is my patient," and as I recall now I told him,—he insisted upon coming in. He wanted to come in and operate; and then I told him he didn't have courtesy privileges and I couldn't allow him to come in anyway, because the patient had a doctor, and it was my duty then to tell him that. I asked him if he wanted to speak to Dr. Bachrach, but that I couldn't allow him to come in because the patient was already booked under another doctor, and so he said to me, "You refuse to have me come in?"

I said, "I am not refusing you."

He said, he asked me what authority I had to bar him from the hospital.

I said I had no authority but I was carrying on my duties; that I was always under the impression that when a patient was admitted under one doctor that doctor was to take care of the patient until the doctor gave another doctor permission to take them over.

Q. How long do you think he was on the telephone?

A. Possibly five or ten minutes.

Q. Now, when you asked him if he would like to talk to Dr. Bachrach, what did he say?

A. He ignored the question.

Q. Did the brother-in-law ask Dr. Bachrach to come to the phone?

A. No, sir.

Q. After Dr. Bachrach went upstairs for the operation did you see him again?

A. I did not see him again that night.

Q. Did you receive any instructions from Mr. Hardin, Mrs. Hardin, or the brother-in-law to call Dr. Bachrach to the phone?

A. No, sir.

Q. Do you know whether there was any further conversation there with Dr. Selders that night?

A. Dr. Selders then asked who I was; he asked my name and wanted to know in what capacity I was in Sibley.

Q. Did you tell him?

A. Yes.

I was formerly assistant superintendent at Millford Hospital, at Millford, Massachusetts, and acted as superintendent at that hospital; I worked in various hospitals, in Framingham and Boston, Massachusetts. There is nothing unusual in the regulation of Sibley Hospital requiring that only physicians who are on the staff may come in there and treat their patients, as that was the rule in Millford, Framingham, and Boston. If a doctor didn't have courtesy privileges he could not operate in any hospital that I have worked in. On the particular occasion I made a written report of the Hardin case, dated June 20, 1938, which I identify as Def. Ex. 6. The report was made on the next day. I remember that Dr. Selders was very persistent and was trying to get me to say something. I hadn't heard the name of Dr. Selders in connection with Mr. Hardin before Mr. Hardin's brother-in-law turned the phone over to me that night.

Cross-examination.

By Mr. Lewin:

Q. Miss Realini, you knew when this Hardin case came into the Sibley Hospital that it was an acute appendicitis, didn't you?

A. Well, I imagine it was or they wouldn't be operating at night.

Q. Don't the hospital records show that it was an acute appendicitis (handing records to the witness)?

A. Well, there is nothing to indicate that it was an acute appendicitis except that it was done at night, and naturally we don't operate unless it's an emergency.

Q. So you knew and assumed when that case came in that it was an emergency case?

A. Yes, sir.

Q. And didn't you understand the rule of your hospital to be that any physician who was licensed to practice would be permitted in the Sibley Hospital to operate in an emergency case?

A. No, sir. I understood that any doctor that had courtesy privileges at Sibley Hospital was allowed to operate at Sibley Hospital.

Q. Now, after you came back from taking the patient upstairs to the admitting office Mr. Booth came in and asked if he might speak over the telephone; is that right?

A. I don't know what his name was, but it was Mr. Hardin's brother-in-law.

Q. Mr. Hardin's brother-in-law. And you said that he might, and you listened to part of the conversation, didn't you?

A. Well, I didn't really—I couldn't help overhearing it.

Q. Yes. You couldn't help overhearing it. And you knew he was talking to a doctor, didn't you?

A. Yes, sir.

Q. And you knew that he was asking that doctor whether he could come and operate on the patient, didn't you?

A. No, I don't know whether he was or not.

Q. How do you know he was talking to a doctor?

A. Because he addressed him as "Doctor" over the telephone.

Q. Yes. Now, you mean to say you didn't hear him talk about this doctor, whoever he was, coming there to operate?

A. I don't remember.

Q. What?

A. I don't remember the exact conversation.

Q. You don't remember?

A. I knew he was talking to a doctor.

Q. Yes.

A. But I didn't know what the conversation was; I just got parts of the conversation, because I was occupied.

Q. Yes. And then the phone was turned over to you, and you talked to Dr. Selders?

A. Yes, sir.

Q. And you knew, then, from your conversation with Dr. Selders, that Mr. Booth had asked Dr. Selders to come and operate on the patient, didn't you?

A. Well, I imagined that he did.

Q. You imagined that he did?

A. Yes.

Q. So then you knew at that time that the family wanted Dr. Selders to operate, didn't you?

A. Well, I imagined so. He wouldn't have called the doctor if he didn't want him.

Q. Precisely. At the time you talked to Dr. Selders, then, you knew that the family of the sick man upstairs wanted a certain physician, and that was Dr. Selders; isn't that right?

A. Yes.

Q. All right. Now, you had this conversation with Dr. Selders; you reached for a list, didn't you?

A. Yes, I did.

Q. This is the list you reached for?

A. Yes, sir.

Q. Now, I think you told Mr. Leahy that there was nothing unusual in your procedure that night. Did you have a list like this for all the other doctors?

A. I didn't remember it at the time.

Q. You mean when you answered Mr. Leahy's question you didn't remember this list?

A. No. I remembered it after he showed me my written statement.

Q. Well, there was something a little unusual about the way you treated Dr. Selders, wasn't there?

A. I wouldn't say so.

Q. Was that the ordinary practice for you to reach for a list like this?

A. Not ordinarily.

Q. Did you have any other list like this in the office?

A. Not like that.

Q. Wasn't this the list that President Taylor had required you to keep there for the Group Health doctors?

A. I don't know.

Q. You don't know. Don't you know that that's a list of the Group Health doctors?

A. As I read (present tense) it, yes, and I signed it, but Dr. Taylor didn't say anything to me about it.

Q. Dr. Taylor didn't say anything to you about it?

A. No.

Q. Who did tell you to sign it?

A. I don't remember.

Q. It was someone in authority at the hospital told you to sign it, didn't they?

A. Possibly.

Q. They told you to keep it there in the admitting office?

A. I am not in charge of the admitting office.

Q. That's all right. They told you to keep it there in the admitting office and use it when you were in charge of it?

A. They didn't tell me to keep it in there.

Q. Now, Miss Realini——

A. It was in the admitting office.

Q. It was in the admitting office. And you were supposed to use it, weren't you?

A. Naturally, I—where I signed my name.

Q. Yes. Naturally you were supposed to use it. And as a matter of fact you did use it in connection with Group Health doctors?

A. I used it that night.

Q. Yes. You knew that whenever a Group Health doctor called up and identified himself you were to reach for this list and deny him the privileges of the hospital, even in emergency cases; isn't that right?

A. No, I don't think so.

Q. Well, now, isn't that true? What did the list mean to you? What does it say?

A. It says "Group Health Association," and just a list of the doctors.

Q. Let the jury hear it. "Group Health Association, H. O. L. C."

A. And it——

Q. And the list of the Group Health doctors.

A. Dr. Henry Brown, Dr. Raymond Selders, Dr. Alexander.

Q. No. Dr. Allan Lee.

A. Oh, Allan Lee; Dr. Edmund Wells, Dr. Stephen Hulburt, and Dr. M.——

Q. Scandiffio?

A. Scandiffio.

Q. Yes. Did you know any of those doctors?

A. No, sir.

Q. Did you know Dr. Scandiffio?

A. No, sir.

Q. Hadn't he had privileges at your hospital for some time?

A. I don't remember, don't ever recall him.

Q. You don't recall him?

A. No.

Q. Now, then, read what was just below their names on the list: "These doctors are not to be allowed in at any time"; isn't that correct?

A. That's right.

Q. They were your instructions, were they not?

A. Naturally, I signed my name to them.

Q. Yes. They were the instructions to the entire admitting office, of all these people: L. Welch, Beulah Mumford, H. R. Dutton, L. A. Wood, J. Jenson, and M. M. Realini?

A. Well, Miss Welch is admittance nurse.

Q. Yes?

A. And so is Mrs. Mumford.

Q. Yes?

A. And Miss Dutton is Director of Student Health.

Q. Yes?

A. And she relieves in the office?

Q. She relieves in the office, the admitting office?

A. Yes. Miss Wood is one of the supervisors of medicine and surgery.

Q. Yes?

A. And Miss Jenson at the time was one of the supervisors of medicine and surgery.

Q. She relieves in the office too?

A. She has resigned since.

Q. She has resigned. But at that time?

A. Yes, sir.

Q. And you?

A. Yes, sir.

Q. That covered the entire admitting office staff, didn't it?

A. Yes, sir.

Q. So there was complete coverage there; am I right?

A. Well, there was—there's another supervisor of medicine and surgery there.

Q. At that time?

A. Yes.

Q. But with the exception of that one, the entire admitting office was covered, and they all had those binding instructions; isn't that right, and were told to use them?

A. We were told to sign the paper.

Q. And it was by reason of this paper that you refused to admit Dr. Selders, and told him so that night?

A. Well, first, because he didn't have courtesy privileges.

Q. Well, now, these, this——

. . . . . .

Q. First, because he didn't have courtesy privileges. Did you look at the courtesy list at that time, or did you look at this list?

A. I looked at the courtesy list.

Q. You looked at the courtesy list as well as this?

A. That's right.

Q. And if he had been on the courtesy list would you have let him in notwithstanding these instructions?

A. Well, I would, yes.

Q. You would have let him in even though you had instructions, which you were supposed to sign and follow, that he was not to be admitted in at any time?

A. Yes, if he had courtesy privileges.

Q. Now, as a matter of fact, Miss Realini, don't you know that Dr. Scandiffio was on the courtesy list at that time.

A. I didn't know it.

Q. Well, when you looked at the courtesy list did you find Dr. Scandiffio's name?

A. Well, I wasn't looking for Dr. Scandiffio's name.

Q. Well, that's all right. Isn't it your testimony that Dr. Scandiffio at the time this happened, at the time this list was prepared, had courtesy staff privileges?

A. No, I don't know whether he had courtesy staff privileges.

Q. And it is your testimony that if Dr. Selders' name had appeared on the courtesy staff privileges you would have overriden these instructions and admitted him?

A. Well, I wouldn't have consulted that.

Q. You would not have consulted this?

A. No, after I looked.

Q. Weren't you required to consult this in the case of all Group Health doctors, whether they had courtesy privileges or not?

A. I don't remember whether I was or not.

Q. Do you mean to say that you got up from the telephone and left the conversation and went over and examined the entire courtesy staff list before you finally replied to Dr. Selders?

A. I don't have to get up and examine it; it's right there at the desk.

Q. How long is the courtesy staff list at Sibley Hospital?

A. Well, it is quite long; I couldn't say offhand.

. . . . . .

Q. It is quite long, and you kept Dr. Selders waiting while you went down that whole list of names to find out whether he was on the courtesy staff?

A. I just went through the S's.

Q. You just went through the S's. Is it kept in a card index?

A. Yes, sir. And they are accessible.

Q. And you turned to the card index and ran through those cards?

A. Yes, sir.

Q. And you did that notwithstanding this paper which settled the whole problem for you?

A. Well, I didn't think of that paper at the time.

Q. Well, didn't you testify that you reached for this paper?

A. Yes, I did.

Q. Isn't that the list that you reached for?

A. I reached for it after.

Q. In the statement and report that you made to Dr. Taylor isn't this the list that you were referring to?

A. Yes.

Q. That you said you reached for?

A. Yes, that is the list.

Q. When you testified before the Grand Jury of the United States didn't you identify this list?

A. Yes, sir.

Q. And tell the Grand Jury that this was the list you reached for, and it was on the basis of this list that you excluded Selders?

* * * * * * *

Q. Is that right? Is that what you told the Grand Jury of the United States?

A. I don't remember.

Q. You don't remember that?

A. No.

Q. Well, now, after you talked with Dr. Selders that first time, Miss Realini, Mr. Booth talked to him again, didn't he, before the receiver was hung up? Or did you hang up the receiver?

A. I don't quite remember, but I know he talked to him a second time.

Q. Yes.

A. But I think it was a separate call.

Q. Yes. And wasn't that immediately afterward, the phone rang again?

A. Yes, while I was in the admitting office. I don't know how soon, but it was while I was in the admitting office.

Q. While you were still in the admitting office?

A. Yes, sir.

Q. And you would say it was a very short time elapsed before the phone rang again, and it was Selders talking to Booth again; is that right?

A. Yes, sir.

Q. And then he talked to you again?

A. No, I don't believe the doctor talked to me again.

Q. Didn't he talk to you any more?

A. No, sir.

Q. After he had the first conversation. After you overheard this second conversation you knew that Mr. Booth was talking with Dr. Selders on another conversation immediately afterward?

A. Pardon me.

Q. I say, you knew that shortly after that first conversation Selders called again and talked to Booth?

A. Yes.

Q. And can't you recollect that you also talked to him on a second occasion or that time?

A. I don't believe I did.

Q. You don't believe you did?

A. No, I don't think.

Q. Would it refresh your recollection if I called your attention to your Grand Jury testimony, do you think? Didn't you say this, in answer to the question put to you:

"Well, what happened after the conversation ended?

"Answer: Well, I think I received another call from Dr. Selders. When I picked up the receiver, he was on the line again. I think he asked me again, so I refused to let him come into the hospital."

Did you say that?

A. Possibly I did. I know I talked with him. Naturally I would have to get the call, and since he wanted to speak to Mr. Hardin's brother-in-law I would have to talk with him first.

Q. Do you remember this testimony before the Grand Jury? You were asked:

"After the remarks between yourself and Dr. Selders in this second conversation, about which you have just testified, what happened next?"

And your answer:

"'Well, I don't think that conversation was very long, because I believe I told Dr. Selders that the patient by this time had already been operated on,"——

A. Yes.

Q. —"or words to that effect."

A. I remember that.

Q. Do you recall that now?

A. Yes, I do.

Q. Now, do you remember that you didn't know whether the patient had been operated on or not? Isn't that right?

A. Well, I assume that the patient must have been operated on. I couldn't say definitely, but the patient must have been up in the operating room.

Q. Yes, but you told Dr. Selders that the patient by that time had been operated on, didn't you?

A. I don't remember if I said that the patient had been operated on.

Q. Well, wasn't that your testimony before the Grand Jury? Wouldn't you say this was correct: "because I believe I told Dr. Selders that the patient by this time had been operated on, or words to that effect"?

A. I said I believed. I didn't say that the patient was. I said I believed.

Q. Well, you didn't say that to the Grand Jury. You said "because I believe I told Dr. Selders that the patient by this time had already been operated on, or words to that effect." Didn't you tell Dr. Selders that?

A. Because the patient was booked for 11:45.

Q. Well, you were trying to discourage Dr. Selders from coming to the hospital, weren't you?

A. I was not.

Q. What was your purpose in telling him that the patient had already been operated on, or that you believed the patient had already been operated on?

A. My purpose?

Q. Yes. Why did you tell Dr. Selders that?

A. Well, because the patient was being operated on.

Q. Well, why did you tell Dr. Selders that? Wasn't it to discourage him from coming and taking the case?

A. No, because the patient already had a doctor, and that's where my duties end.

Q. Well, why did you tell Dr. Selders that the patient had been operated on, or that you believed that the patient had been operated on?

A. I don't know why I told him.

Q. You don't know why?

A. Because I believed that the patient had been operated.

Q. Especially when that was resting solely on an assumption on your part; am I right?

The Court: I think that is argumentative. I will sustain an objection to it. That is quite argumentative.

By Mr. Lewin:

Q. Well, now, had you left the admitting office between those two calls?

A. No, I hadn't.

Q. Had anybody told you that the patient had been operated on?

A. No.

Q. You simply assumed that it had?

A. Yes.

Q. That the patient had been?

A. Yes, sir.

Q. And yet you told Dr. Selders that the patient had been operated on?

Mr. Leahy: She said that she believed he had been.

The Witness: I said I believed it. I said I believed.

By Mr. Lewin:

Q. Well, you are not quite sure about that?

A. I said I understand that the patient had been operated on.

Q. And you don't know why you told Dr. Selders that?

A. I don't.

Mr. Leahy: She has answered: because she believed the patient was being operated on.

Mr. Lewin: She hasn't done anything of the sort. She said she couldn't explain.

The Court: I think you have been pretty thoroughly over that, Mr. Lewin.

By Mr. Lewin:

Q. Did you discuss with any member of the patient's family who was there the right to have Dr. Selders perform the operation?

A. I don't remember.

Q. You don't remember?

A. No.

Q. Don't you remember discussing it with Mr. Booth and Mrs. Hardin, and their wanting Dr. Selders?

A. No, I didn't discuss—I didn't discuss with Mrs. Booth, because I don't remember.

Q. Mrs. Hardin.

A. Mrs. Hardin, I mean.

Q. Was Mrs. Hardin there at some time during the conversation?

A. She didn't come in the admitting office.

Q. Didn't she come in that night?

A. I don't know if she came in there or not, because she was upstairs afterward to see the patient.

Q. Did she come in later?

A. I believe she came in with the patient, but I didn't see her.

Q. You are clear, through,——

A. At least, I don't remember. Possibly she was there, but I don't remember.

Q. You do clearly remember, though, that Mr. Booth wanted Dr. Selders?

A. I clearly remember that Mr. Booth was in the office and wanted to use the telephone. That is very clear in my mind.

Q. You knew he wanted to have Dr. Selders operate, didn't you?

A. Not before he talked—not before I talked with Dr. Selders.

Q. Not before you talked with Dr. Selders?

A. No, sir.

Q. But after that you did, didn't you?

A. When I talked with Dr. Selders.

Q. Yes.

A. Doctor Selders told me.

Q. Yes. Well, then you must have known that Dr. Bachrach had no authority to go ahead with the operation, didn't you?

A. Well, that isn't up to me. I'm the nurse. I am not a doctor.

Q. At the time you were talking to Dr. Selders you knew that Mr. Booth didn't want Dr. Bachrach but wanted Dr. Selders; isn't that right?

A. Well, I knew that Mr. Booth wanted Dr. Selders, yes.

Q. Yes. And yet you gave Dr. Selders, as one of your excuses for not letting him there, that it was Dr. Bachrach's patient?

A. That's right.

Q. Which you must have known that it wasn't Dr. Bachrach's patient at that time?

A. The patient was admitted under Dr. Bachrach's——

Mr. Leahy (interposing): Isn't that argumentative.

The Court: Yes, Mr. Lewin.

The Witness. The doctor—the patient was admitted under Dr. Bachrach's name.

By Mr. Lewin:

Q. You knew that Dr. Bachrach's name was on the slip?

A. He didn't want—the Dr. Bachrach was booked—the operation was booked under Dr. Bachrach.

Q. Yes. If Dr. Bachrach's name had not appeared upon the admitting card, would you have admitted Dr. Selders?

A. Possibly I would have.

Q. You would have?

A. Possibly.

Q. Notwithstanding the list that you reached for which said that Dr. Selders was not to be allowed in at any time?

A. I don't know what I would have done if Dr. Bachrach's name wasn't on the admitting—wasn't booked for the operation.

Q. Wasn't this the real reason that you refused Dr. Selders, and not the fact that Dr. Bachrach's name was on the card (indicating United States Exhibit 496)?

A. Primarily it was Dr. Bachrach's name, and that's why I refused him, primarily.

Q. Weren't you asked this question before the Grand Jury:

"Is this not the reason: that when you saw this list, you knew that under no conditions could Dr. Selders be admitted to the hospital, regardless of whether the patient had another physician attending him at the time or not?"

And your answer, "I suppose underneath it all I felt that way."

Did you give that testimony?

A. Well, if it's there I must have given it.

Q. And is it correct?

A. I don't know whether it is or not.

Q. What? You don't know? Did you ever see this paper or the original of it (handing the witness United States Exhibit 491)?

A. No, I don't ever remember.

Q. Don't remember that?

A. No, I don't ever.

Mr. Leahy: Is that an identification of it?

Mr. Lewin: Yes, 491.

Mr. Kelleher: It is in evidence.

Mr. Lewin: I have no further questions. Thank you.

Redirect examination.

By Mr. Leahy:

The list, Gov. Ex. 496, is in the handwriting of Mrs. Mumford and not of Dr. Taylor. Dr. Taylor never said anything to me about anything contained in the list. Mrs. Mumford was admitting nurse at that time. When a doctor seeks to treat a patient in a hospital the courtesy list is checked and if he hasn't courtesy privileges he is told that he has no such privileges. In my report to the hospital on June 20 I mentioned the fact that I looked at the list, Gov. Ex. 496. As I reached for the phone it occurred to me to reach for the slip. When the admission record was made on Mr. Hardin's admission, no mention was made of the fact that he was a Group Health patient. His wife said nothing about it.

The defendants offered in evidence Def. Ex. 6 and 7. The Government objected to Def. Ex. 6 on the ground that it was merely a memorandum and could only be used to refresh the recollection of the witness, and was not admissible in itself. This objection was sustained to Def. Ex. 6 and an exception was noted on behalf of the defendants.

Def. Ex. 6[8] which was rejected reads as follows:

"June 20, 1938.

Report for Doctor Taylor:

Sunday, June 19, about one-half hour after Mr. Hardin was admitted to 201 Main, his brother-in-law asked me if

---

[8] The witness was shown defendants' Exhibit 6 and made references thereto on direct examination.

he could use the telephone in the admitting office as he wanted to make an important call and didn't have any money. He said that the call could be charged to Mr. Hardin, for whom the call was being made. I told him in that case it was all right to use the phone.

I had no idea who he was calling, however, while he was talking I gathered from parts of the conversation that he was speaking to a physician. Presently, he turned to me and said that Dr. Selders was on the line and wanted to talk to the nurse in charge. As I reached for the phone, it occurred to me to reach for the slip which had the names of the H. O. L. C. doctors on it,—the name seemed familiar—and I found that Dr. Selders' name was on it. In the meantime, Dr. Selders told me who he was and wanted to know if he could come in to operate on Mr. Hardin. I told him that Dr. Bachrach had booked the operation and that he was in the hospital at the time. Dr. Selders then said that he should operate on Mr. Hardin instead of Dr. Bachrach. I replied that Mr. Hardin was referred to the Hospital by Dr. Bachrach and that there wasn't anything I could do about it and since he (Dr. Selders) did not have a courtesy privilege that he could not operate. He became very angry and wanted to know what right I had to bar him from operating and asked me for my name and position. I gave him my name and told him I was the night supervisor and that I didn't want to seem discourteous but that all hospitals, including Sibley Hospital had rules by which the supervisors or whoever was in charge had to abide by. I asked him if he wanted to speak to Dr. Bachrach, the attending surgeon, or to the resident physician and he ignored my question by answering. 'So you say that I have no right to operate on this man.' I replied, 'Since you haven't a courtesy privilege here, Doctor, naturally you can't operate on anyone in this hospital.'

He asked me if there were any other doctors that were barred and who made the rules. I told him that it was a rule of the hospital, as I had told him previously, and also that I had worked in other hospitals outside of the District and I always found that all hospitals had rules and that I abided by them. It occurred to me then that he was trying to get information about the circumstances of the case of which I could not understand, so I tried to end the conversation as quickly as I could without being rude. He persisted in asking me if I had any names of other doctors

that could not operate here. I told him it was unethical for me to answer such a question and the only thing I could say was that he could not operate. He replied that the reason he asked that question was that he wanted to know if he could send in another doctor to operate. I reminded him that Dr. Bachrach had booked the patient for operation and that I thought by this time he had already started to operate. At this point, he terminated the conversation saying that he'd see about the whole incident.

I had no sooner hung up the receiver when the phone rang and Dr. Selders asked if he could speak to Mr. Hardin's brother-in-law. I called Mr. Hardin's brother-in-law to the phone. They had a lengthy conversation, but I can't recall what was said.

Millina M. Realini, R. N."

Def. Ex. 7 was received in evidence and read to the jury as follows:

"In case of emergency call Mrs. Helen Hardin.
Physician. Dr. Bachrach, Surg.
Nature of case.
Responsibility for the account. Charles G. Hardin, Jr.
Relationship to the patient. Wife.
Giving the address as 215 North Piedmont Street, Arlington, Virginia, the telephone number, or 1419 H Street, N. W., and the telephone number there; with Miss Realini's name on the back."

Dr. Lee Solet, a witness for the defendants.

Direct examination.

By Mr. Leahy:

My office is in Arlington, Virginia, where I have been for over three years. I graduated from the Middlesex College of Medicine and Surgery in Boston in 1933, took my interneship at Unity Hospital in Brooklyn, New York, and a residency at Womens and Childrens Hospital, Toledo, Ohio. Oh June 19, 1938, I was called in to visit a Mr. Charles Hardin, at 9:45 p. m. I saw Mr. Hardin in the presence of Mr. Hardin's wife. On examining Mr. Hardin I found that he looked quite well, except that he complained of having had a pain the day before, and had a pain that

day, and was a little disturbed, although he said he felt quite well. The physical examination revealed no temperature, no nausea or vomiting, but the patient complained of a pain over the right side of his abdomen that looked suspiciously like a possible appendix. I advised the patient to call in someone to verify that. I asked the patient if he had any particular physician and he replied, "No, you are the doctor," so I called in Dr. Bachrach, who specializes in surgery. Dr. Bachrach came over to Mr. Hardin's home in Arlington, Virginia, at approximately 10:35 or 10:40. He asked the patient a number of questions, made an examination of the patient, and stated he was of the opinion that he had appendicitis, and suggested that the patient go to the hospital. Sibley Hospital was called and arrangements were made for Mr. Hardin's admittance. Arrangements were made for Dr. Bachrach to operate on Mr. Hardin. I, with Mr. and Mrs. Hardin in my car, and Dr. Bachrach following in his car, proceeded to Sibley Hospital and arrived in 30 minutes. We arrived at Sibley Hospital at 11:15 or 11:20 p. m., where we were met by Mrs. Hardin's brother. Mrs. Hardin and her brother went into the admitting office and made arrangements for the admission of Mr. Hardin, while I remained outside talking to the patient, who was in a wheel chair. I identify Def. Ex. 7 as the admission record of Mr. Hardin. Mrs. Hardin and her brother were in the admitting office about 10 minutes. Mr. Hardin didn't go into the admitting office. Mr. Hardin was assigned a room and I went with Dr. Bachrach to the operating room to prepare for the operation. At 12:25 a. m. Mr. Hardin was operated on by Dr. Bachrach, assisted by the resident and the internes of the hospital, while I observed the operation. A time was required prior to the operation to prepare the patient for it and for the doctor to prepare for the operation. From the time we doctors went upstairs until the operation we were engaged in changing our clothes, putting on gowns, and scrubbing. Nothing occurred—Dr. Bachrach just operated on the patient. After Dr. Bachrach operated I saw the patient until he left the hospital five days later. The patient had a gangrenous appendix which was removed.

I heard the name of Dr. Selders for the first time after Mrs. Hardin and her brother came out of the admitting room and then I just happened to overhear that name in conversation. The name of Dr. Selders had not been sug-

gested to me at any time prior to my coming to the hospital; neither had Group Health been mentioned. When I suggested a surgeon or doctor at the home of Mr. Hardin and asked him which surgeon Mr. Hardin preferred, he merely said, "You are the doctor," so I immediately called Dr. Bachrach.

Cross-examination.

By Mr. Kelleher:

Mr. Hardin was sick when I saw him. It turned out that he had a gangrenous appendix, which is a pretty serious matter. Dr. Bachrach diagnosed Mr. Hardin's condition as acute appendicitis in my presence. It was necessary, in my opinion, to operate on the patient that night. The operation takes place whether in the night or in the day when the patient decides to go to the hospital. Dr. Bachrach recommended an operation that night and verified my diagnosis of a possible appendicitis. I did not diagnose it as acute, but Dr. Bachrach did. The following day I saw the patient and I saw him every day and removed the sutures when the wound healed. I had privileges at Sibley Hospital and have had them since 1938. The arrangements for a surgeon were made with Mr. Hardin and not Mrs. Hardin. After mentioning several doctors I suggested Dr. Bachrach to the patient. Mrs. Hardin didn't request me to name them. I don't recall either Mr. or Mrs. Hardin ever telling me that evening that they were members of Group Health. The question of whether G. H. A. doctors could operate in local hospitals didn't come up in the case. I didn't discuss Group Health in the presence of Dr. Bachrach and no mention was made of Group Health. Mr. Booth, the brother-in-law of Mr. Hardin, never spoke to me at the hospital that evening and didn't speak to Dr. Bachrach in my presence. I heard a reference to Dr. Selders in the admitting room between Mrs. Hardin and Mr. Booth and Dr. Bachrach probably was around there, but that is the only mention I heard of Dr. Selders. All I heard was that Dr. Bachrach was competent and to go on with the operation, and the fact that Dr. Selders couldn't operate at the hospital. The conversation was between Mrs. Hardin, Mr. Booth, and Dr. Bachrach, as I was with the patient at the elevator. I am a member of the American Medical Association.

ISABELLE M. KANFOUSH, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I am a registered nurse. I am employed as a nurse at Walter Reed General Hospital. In January, 1938, and until June, 1939, I was a general duty nurse at Emergency Hospital. The duties of a general duty nurse depend on the part of the hospital to which the nurse is assigned; it is usually bedside nursing. For about two months I worked in the emergency room at Emergency Hospital, which deals with emergencies which come in from the outside. Emergencies in this sense mean accidents or acute abdominal cases, or anything of that kind. The chief duties of an emergency nurse are to take care of the patients coming in that have been injured in automobile cases or who have been cut or injured in any other way. I recognize Def. Ex. 4 as my name appears on the piece of paper attached thereto. The exhibit concerns the case of Harriet A. Austin. I was on duty on September 7, 1938, and I remember Mrs. Austin coming into the emergency room that day, as I was the nurse in charge and took care of the case. The patient was brought in in an Emergency Hospital ambulance at 5:25 p. m., the call for an ambulance was received at 5:19 p. m., the patient was received in the ambulance in the vicinity of 11th and Pennsylvania Avenue. The call for an ambulance was answered immediately and Dr. Mackowiak went out on the ambulance call. The driver was named Curtis. The patient was brought in to the emergency room. The information on the card is written in my handwriting and was obtained from the patient, Harriet A. Austin. I was present in the emergency room when Mrs. Austin was brought in. She had no external injuries, her general condition was good, she had no cuts or bruises except on the right hip and a bruise on her right elbow. The patient was undressed, examined thoroughly from head to foot, and was given a medication known as 2-2-10, being two drams of bisodol, two drams of lactopepsin, and ten minims of tincture of belladonna. The emergency room is a large room where there are two beds and a rest room. Mrs. Austin was admitted, taken to the rest room, undressed and put to bed. I was present when the request was made by some lady—I don't know whether it was a daughter or sister of the patient—for a doctor. The

lady asked me if she could have Dr. Selders come in and see her mother and I told her that Dr. Selders was not on the courtesy list of the hospital but that he could and he would be called and asked to come into the hospital and talk to her and the patient, and see if they could arrange to have one of the staff men take care of the patient. The patient herself refused to have the doctor called and decided that she was going to go somewhere else. The patient made that statement herself. The patient wanted to leave the hospital, asked to leave, but the rule is that no patient whom the doctors think should stay in the hospital is permitted to leave unless he or she signs a release, and that is what she was asked to do, and she signed a release. I recognize the signature of Mrs. Austin on the release; and the signature of Dr. Harris, an interne, in the emergency room. Everything was done for Mrs. Austin in the emergency room that night that could have been done under the circumstances. When the patient left the hospital she walked out.

Def. Ex. 4 (case of Harriett A. Austin) was received in evidence and read to the jury as follows:

"Call received 5:19 p. m. By Kanfoush. How received: Peoples Drugstore.

Call answered 5:15 p. m. By Dr. Mackowiak. Driver Curtis.

Time returned 5:28 p. m. Disposition of case Bro. in.

Name Harriet A. Austin. Address 1543 44th St. N. W.

Brought in E. H. Amb. Date 9-7-38. Time 5:28 p. m.

Dr. Mackowiak-Gerber-Fry. Nurse I. Kanfoush.

Diagnosis, Pos. fract. lt. hip.

Disposition of case. Refused hospit. Signed release.

Remarks. Pt. states a few min. ago at 11th and Pa. Ave. N. W. she was crossing the street & was hit by a car driven by unknown party. Injury to left hip and right elbow."

The treatment is that '2-2-10.' I will not try to repeat it because I cannot.

By Mr. Leahy:

Q. Would you tell us what this "P. N." on the bottom is?

A. Yes. In all accident cases we notify the police. It just so happened that this case was in the First Precinct. That means Police Notified.

CLERK'S COPY.

Vol. II

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TRANSCRIPT OF RECORD

537028
U. S. C.

Supreme Court of the United States

OCTOBER TERM, 1942

No. 201

AMERICAN MEDICAL ASSOCIATION, A CORPORATION, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 202

THE MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA, A CORPORATION, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED JULY 8, 1942.

CERTIORARI GRANTED OCTOBER 12, 1942.

NOS. 7929 AND 7930

VOL. II pp. 753 to 1529

RECORD ON APPEAL

Supreme Court, U. S.
FILED
JUL 3 1942
CHARLES ELMORE CROPLEY
CLERK

IN THE

United States Court of Appeals for the District of Columbia

UNITED STATES
COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

APRIL TERM, 1941

SPECIAL CALENDAR

FILED NOV 12 1941
Joseph W. Stewart
CLERK

No. 7929

AMERICAN MEDICAL ASSOCIATION, A CORPORATION, APPELLANT,

vs.

UNITED STATES OF AMERICA, APPELLEE

No. 7930

THE MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA, A CORPORATION, APPELLANT,

vs.

UNITED STATES OF AMERICA, APPELLEE

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

PRESS OF JUDD & DETWEILER, INC., WASHINGTON, D. C.

IN THE

United States Court of Appeals for the District of Columbia

APRIL TERM, 1941

No. 7929

AMERICAN MEDICAL ASSOCIATION, A CORPORATION, APPELLANT,

vs.

UNITED STATES OF AMERICA, APPELLEE

No. 7930

THE MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA, A CORPORATION, APPELLANT,

vs.

UNITED STATES OF AMERICA, APPELLEE

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

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Mr. Leahy: Attached to the card is a signed release which she signed when she left the hospital September 17, 1938. It reads as follows (reading):

"In leaving the Emergency Hospital against the advice of Dr. J. H. Harris I assume all responsibility for the results that may follow.

Signed: Mrs. H. A. Austin.

Witnessed: J. H. Harris. Isabelle M. Kanfoush, R. N."

DR. THOMAS J. DUGAN, JR., a witness for the defendants.

Direct examination.

By Mr. Leahy:

I am a physician at the District Training School, where I have been since June 15, 1940. I graduated from George Washington Medical School in 1936, interned at Emergency Hospital, was assistant resident and resident in surgery at Garfield Hospital from July 1, 1937 to June 30, 1938. As assistant resident in surgery primarily my duty was to assist the resident in surgery, helping with operations. On the night the resident was off, or at any time he might be absent, the assistant resident is in charge. More responsibility attached to the office of resident, and the resident was allowed to operate on more cases under supervision of the staff doctors. I was at Garfield Hospital when a Miss Elizabeth Tew was admitted there. I wrote a report that night, which will give the date. It was understood at the hospital that in case anything unusual happened that a report was to be made thereof to the superintendent, and on several occasions I have been asked to write reports of something that happened in the hospital while I was on duty. The reports were made to the superintendent. I identify Gov. Ex. 488 for identification as the report made by me of what happened on the night of February 26, and my signature is thereon. Def. Ex. 2 is the hospital chart of Garfield Hospital of Miss Tew, and the accompanying papers are the records of Miss Tew's case. I first saw Miss Tew at the hospital sometime between 7:30 and 8:30. She was assigned to a room in Ward B and when I first saw her was in company of a nurse and one or two other persons. Later Dr.

Harry Kerr requested me to make an examination of Miss Tew. Dr. Kerr was the senior surgical staff man on duty at that time at Garfield. In pursuance of this request I examined Miss Tew around 9 o'clock. As a result of my examination I concluded that the case was not acute enough that it had to be operated that night. I saw Dr. Selders at the hospital. I reported the result of my examination to Dr. Kerr and Dr. Kerr asked me to tell Dr. Selders that he would not be allowed to operate in this case as it was not considered an acute emergency.

Def. Ex. 8 and 9 (being identical) were received in evidence and read to the jury as follows:

Mr. Leahy: The two papers which have just been identified are the original and a copy on the letterhead of Garfield Memorial Hospital, School of Nurses, Washington, D. C., dated February 26, 1938.

"Dr. Selders:

"On the advice of H. H. Kerr, the case of Miss Elizabeth Tew is not considered an acute surgical emergency.

T. J. Dugan, Assistant Surgical Resident."

Dr. Selders asked me to sign Def. Ex. 8 and 9 because, after the examination of Miss Tew by me, Dr. Kerr and I concluded that there was no acute emergency sufficient to allow a man to operate who did not have surgical privileges at Garfield Hospital, and, for that reason, the paper was given to him. Dr. Selders only had surgical privileges in the case of a surgical emergency. I informed Dr. Selders that I was very sorry but that he would not be allowed to operate on Miss Tew. I also conveyed this information to Miss Tew. When I told Miss Tew of this fact a young lady, a young gentleman, Dr. Bolton, and a nurse, Miss March, were in the room.

Q. Give us to the best of your recollection what was said by you?

A. This was after Dr. Selders had been refused permission to operate. Is that what you mean?

Q. Yes. When you told Miss Tew about it.

A. I went to Miss Tew's room because I felt it was only right that the hospital——

The Court: Just what you said.

The Witness: I don't remember the conversation but as far as——

Mr. Leahy: The substance.

A. The substance was that since Dr. Selders was not on the courtesy staff of Garfield Hospital he would not be allowed to operate on Miss Tew, but that we would be very glad to have any member of the staff of Garfield or, for that matter, any member of the courtesy staff of Garfield Hospital, who she would want, or would name, we would have that doctor come down and examine her, and she could then follow his advice. After that she said, "No," she wanted Dr. Selders. I said, "I am sorry, Dr. Selders cannot operate on you." Then she said that she would leave the hospital.

I said, "Well, if you leave Garfield, will you sign this hospital release," which I believe is here.

She said, "Yes, I will be glad to sign it."

Immediately Dr. Selders, or one of the other two witnesses said, "No, you can't," because she is under morphine, and then Miss Tew said, "No," she would not sign it. I said, "That is perfectly all right with me. Are you going to leave the hospital?"

She said, "Yes."

Then I said, "You are going to leave against the advice of the hospital and I will read this release to you."

Q. Have you it here, that release?

A. It should be on this chart. Well, anyway I read the hospital release to her and she still refused to sign it; then my recollection is that I said, "Well, I am awfully sorry," and left the room. In other words, no further discussion was entered into. Some time after that, oh, it must have been an hour, possibly two hours later, I went to Miss Tew's room by myself and said, "Miss Tew, this is a very unfortunate circumstance; I am sorry it has had to happen to you, and I am sorry we are both in this mix-up. Dr. Selders isn't able to operate in this hospital, and, if I may suggest, and if I were in your place, when you go home I would go to bed, put an ice pack on my abdomen, take nothing by mouth except a few sips of water and stay in bed, and call another separate physician who is not mixed up, not connected with either Garfield or Group Health, or any organization, except a physician of your own choosing." And at that time Miss Tew was very, very pleasant; she

was dressed and on the bed, and it was over two or three hours after she had her morphine, but then I told her not to leave until she got good and ready to leave; that there was no hurry."

The chart shows that Miss Tew was given a quarter grain of morphine at 8:15 p. m. The history, Def. Ex. 10, was given to Dr. Kruetzberg and I read this history before I made the examination.

A. "Blood pressure was 120 over 80." This is February 26, 1938:

"Nutrition, good; well developed and well nourished; not acutely ill. Head and neck—not remarkable. Chest—resonant throughout. [redacted]sicular breathing—no rales. Heart—within normal limits; regular; no murmurs. Abdomen—right rectus rigidity tenderness to pressure in entire R. L. Q.," that is right lower quadrant; "No palpable masses; Pelvic—not done; Extremities—negative. Sub-acute appendicitis."

That is Dr. Kreutzberg's examination.

I had no other history before me when I made the examination except what I got from Miss Tew.

In examining Miss Tew I obtained the history that she had been ill for about a week with some R. L. Q. pain and nausea, temperature around 99.4 degrees. Though there was some very slight rigidity, it was certainly not acute enough to be operated in the middle of the night and I thought the case should wait until the next morning. I identify Gov. Ex. 584 as the release slip which I read to Miss Tew that evening but which she refused to sign, saying she would not sign it and was going to leave the hospital. She had at 8:15 p. m. a quarter of a grain of morphine and this was at 9:55 p. m., so it was a little over an hour and a half since she had it. She was moderately groggy at the time. I asked Miss Tew to sign the following paper:

"I hereby acknowledge that Miss Elizabeth Tew is leaving the Garfield Memorial Hospital against the advice of the attending physicians, and that I assume all responsibility for the risk in so doing.

____ ____.

Also present but not signing—Miss O'Connor, Mr. Adams, Dr. Selders, Miss Tew."

While I was at Emergency Hospital I knew of doctors not on the staff of that hospital, other than Dr. Selders, who were refused the privilege of treating patients and operating there, and those other doctors were not connected with Group Health. I know Dr. Selders, have scrubbed with him, that is, have gone through a cleansing process to be sure the physician's hands are clean, and I assisted him in three to five or six operations.

Cross-examination.

By Mr. Lewin:

I was 28 years old at the time of the Tew incident. I finished my interneship eight months prior thereto and had been a full fledged doctor for eight months. Dr. Kreutzberg, an interne, examined Miss Tew that night as well as myself. Dr. Kreutzberg was under me and about the same age. Dr. Kreutzberg received his degree from Georgetown University in 1937, and had been a doctor since 1937.

Q. And did anybody else at Garfield make this examination of Miss Tew except you two gentlemen?

A. Not that I know of.

Q. When you made the examination of Miss Tew you had heard she was a Group Health patient?

A. I believe I had, yes.

Q. You had heard that Dr. Selders had posted the operation?

A. That is correct, yes.

Q. You knew that he was down in the room scrubbing for the operation?

A. Oh, no; of course not.

Q. Didn't you know that?

A. No, of course not. Dr. Selders never did scrub that night. His hands were just as dirty when I saw him last as they were when he first came in.

Q. He came in to go down to scrub, did he not?

A. Yes, he came in and was going to scrub. I tried to get him. I would have stopped him before, if I had been able to get him. If I had reached him I would have said, "You haven't surgical privileges in this hospital, so you can't operate," but I couldn't get him.

Q. The point is that he had called the hospital, had posted the case; had sent the case there, and Miss Tew had been

taken to her room, and this doctor had on his scrubbing suit and was ready to go to work.

A. Yes.

Q. And then you stopped him?

A. Yes, I did.

Q. You knew that he was down there ready to scrub at the time you made this examination?

A. May I say something further?

Q. Certainly, but I wish you would answer my question.

A. This is all fine if we didn't have anything else to do, except sit there and take care of Dr. Selders, but it so happened that on that particular night it was awfully busy, if I may say so, because I was scrubbing with the other case posted five minutes before Dr. Selders came, an appendix that Dr. Smiler did; I was tied up there. At the same time there were one or two catherizations to be done; and I had to take care of this other work in addition to trying to get hold of Dr. Selders, and when he did get in I was in the operating room working on another case.

Q. But you knew that Dr. Selders was ready to proceed with the operation?

A. Yes.

Q. And you knew that she was a Group Health patient?

A. Yes.

Q. You also knew that some doctor objected to Dr. Selders performing the operation?

A. What doctor?

Q. Didn't you know that a member of the staff there objected to Dr. Selders' presence in the hospital?

A. Oh, Miss Patton, who was assistant superintendent of nurses, a fuss budget, came up to me and said, "Dr. Dugan, Dr. Edgar Davis is all upset because Dr. Selders is going to operate."

Q. Who is Dr. Davis?

A. A surgeon in town.

Q. A member of the Medical Society?

A. Yes.

Q. Was the statement that Miss Patton made to you, was that what put you in motion that caused you to examine Miss Tew?

A. No, indeed. Miss Patton had nothing to do with it. She was saying how awful it was, what a terrible thing it was that Dr. Selders, who had no courtesy privilege, was

going to operate; this and that; it amounted purely to nothing, so far as what she said.

Q. You hadn't told Dr. Kerr at the time you made this first examination?

A. I think I had talked with Dr. Kerr. Of course, it was my right and privilege to examine any patient in the hospital I wanted to, particularly, on surgical service. In other words, I could have examined her as soon as she got in bed, but if I felt there wasn't reason to examine the case I didn't have to.

Q. The point is you examined her as the result of Miss Patton's having told you Dr. Davis had said something about it, and how he felt.

A. No, I examined her as the result of my own desire, before I talked with Dr. Kerr.

Q. You just told us this was a very busy night.

A. Yes.

Q. Dr. Selders hadn't asked you to examine his patient?

A. No.

Q. Dr. Kerr hadn't asked you to examine the patient?

A. No. Here is the reason why——

Q. Just answer the question. I will give you a chance to explain. No one had told you to examine that patient?

A. That is correct.

Q. You wouldn't ordinarily examine that patient on that busy night without somebody telling you to do it?

A. Might I put in something there?

Q. Yes.

A. Yes, I would have on that busy night whether anybody told me to examine her or not.

Q. Didn't you examine that patient as the result of what Miss Patton had told you Dr. Davis had stated?

A. No, absolutely not. Do you think——

The Court: Don't ask questions. Just answer them. Let the lawyers do that.

The Witness: I am sorry, your Honor.

By Mr. Lewin:

Q. Isn't this a correct statement of what happened? At 7:10 a Dr. Smiler had called and posted an acute appendix in the ward there?

A. May I read this?

Q. About 7:15 Miss LaFevre called and said that Dr. Selders had posted a case for 8:30, and did he have surgical

privileges. That you then went to Mr. Macatee's office and found him off duty. Now who is Mr. Macatee?

A. He was the night superintendent of the hospital or, I think his title is, probably, treasurer of the hospital. He was the business manager who generally was on duty to ten-thirty or eleven at night.

Q. You tried to call Dr. Selders but were unable to reach him?

A. Yes, that is correct.

Q. And Dr. Davis, that is this Edgar Davis, had heard that Dr. Selders had posted a case. Now how did he know that?

A. Through Miss Patton.

Q. "I called Dr. Eisenman immediately and was told Dr. Selders did not have surgical privileges unless it was an acute emergency." Who told you that?

A. I was told by Mr. Eisenman.

Q. You called Mr. Eisenman and he told you Dr. Selders didn't have surgical privileges unless it was an acute emergency, "a ruptured appendix"?

A. Yes.

Q. Didn't you say before the grand jury that "Unless the appendix is ruptured or very warm"?

A. It is essentially the same.

Q. Yes?

A. It would have to be an awfully acute condition.

Q. And Dr. Selders, then, would not be permitted to operate in that hospital unless it was an acute emergency, in which case he would be entitled to do so; isn't that true?

A. I think probably anybody could get privileges if somebody was going to die.

* * * * * * *

Q. Now, then, Miss Patton came up to you, and she was the assistant superintendent of nurses, was she not?

A. That is correct.

Q. And she told you that Dr. Edgar Davis had been in to see her and that Dr. Davis had said that if Dr. Selders was to operate he would have to take his patients elsewhere?

A. That was second-hand, though, from her.

Q. You believed it, though, coming from her, did you not?

A. It didn't make any difference to me one way or the other what she said.

Q. Why did you put it in this report then?

A. I tried to put in everything that happened that night so that if anything came up in the future I would have a record of what transpired.

Q. It was after those talks with Mr. Eisenman and Miss Patton that you decided to examine Miss Tew?

A. I decided to examine her, yes.

Q. Wasn't it the result of Eisenman and Miss Patton's conversation with you, the latter having related what Dr. Davis said?

A. May I ask a question? It is purely this: If I called up Dr. Kerr what was I to tell him about the patient? In other words, when I called him it would be relative to Miss Tew and, as a result, I had to at least be able to tell him something; whether she was white or colored; was she tender? In other words, something about the case. That is the only reason I examined her.

Q. The first thing you told Dr. Kerr about was the G. H. A. connection and that Dr. Selders wanted to operate; isn't that true?

A. No, I don't think so, as far as I remember. It was all wrapped up in the same thing: I didn't have to say G. H. A. to Dr. Kerr because he knew Dr. Selders by name.

Q. Dr. Kerr knew about Dr. Selders in Group Health?

A. I suppose he did, because he was on the surgical staff that refused him the privileges.

Q. And when you called Dr. Kerr, you called attention to the fact that here was a G. H. A. patient, did you not?

A. Not that I know of.

Q. Didn't you say on your memorandum that you told him about the circumstances of the patient?

A. Circumstances of the patient coming in, having a more or less tender abdomen. I didn't mention G. H. A. It wasn't necessary for me to mention it to Dr. Kerr that she was a Group Health case. He knew; after all, he was a staff man.

Q. Why was it necessary to call Dr. Kerr?

A. Because Dr. Selders, like a lot of other men, didn't have surgical privileges at Garfield.

Q. Therefore you called Dr. Kerr to see whether or not an exception might be made in his case?

A. That is it.

Q. And didn't tell him it was Dr. Selders with a G. H. A. case?

A. No, I didn't.

Q. Didn't you say you called to see whether an exception might be made?

A. I don't think I said "an exception." I called to explain the situation to him and to tell him that Dr. Selders wanted to operate.

Q. Do you call Dr. Kerr every time you make an examination of a patient?

A. I would if there was any question in my mind about it.

Q. And you called Dr. Kerr on that occasion because there was a question in your mind?

A. Yes.

Q. And you must have told him that it was Dr. Selders who wanted to operate and that the patient was a G. H. A. case, didn't you?

A. I may have mentioned it.

Q. Aren't you sure that you did mention it? You just told us that the reason you called Dr. Kerr was because you had a question in your mind; the question was whether Dr. Selders could operate.

A. Yes.

Q. Now do you mean to say that you didn't explain those circumstances to Dr. Kerr?

A. I may have; not that I remember.

Q. What did Dr. Kerr tell you? He told you to call Dr. Eisenman, did he not?

A. I don't know whether he did or not.

I think Dr. Kerr called Dr. Eisenman. Dr. Eisenman immediately called me back and told me that under the circumstances, having no surgical privileges, Dr. Selders could not operate. I told Dr. Kerr that it was a case that Dr. Selders had. I didn't want to decide what an acute surgical emergency was and passed it to Kerr to let him stick his neck out as to what was an acute surgical emergency.

Q. I ask whether the statement on the Kreutzberg history; the statement of her illness that you obtained from the patient herself; the tenderness that you found in the R. L. Q. region; the temperature of 99.4 degrees, and the white blood count of 14,400 did not fit in very well with a diagnosis of an acute appendicitis?

A. I didn't think it was acute, sufficiently so to be operated that night.

Q. And Dr. Selders did think so?

A. Yes.

Q. So it was your judgment against his?

A. Dr. Selders made a statement that any time you can diagnose an appendix it should be operated immediately. I didn't entirely agree with his statement.

Q. And you weren't so sure of your diagnosis, and you called Dr. Kerr?

A. May I say something first? Relative to my duties as resident at the hospital——.

Q. Well, if you would like to.

A. (Continuing) I would like to. Supposing a patient came into the hospital; separate and distinct, a ward case that couldn't pay a thing. The interne in the emergency room would examine the girl. I would examine her. If I thought it was an acute case I would pick up the phone, call the staff man on service, Dr. Kerr, and he would either say "Go ahead and operate the case" or "I will come down" or "We will leave it until tomorrow."

Q. Is that the usual procedure when a patient comes there with her own physician, who has diagnosed the case as acute and is ready to operate?

A. It is not the usual thing, no.

Q. It is a very unusual procedure to go over the diagnosis made by a patient's own doctor, is it not?

A. I won't say that, because I recall two specific cases in which it was a good thing that the interne did it.

Q. Were these cases like this? When Dr. Selders had already diagnosed the case as acute, and when all these symptoms were present as have been described?

A. Well, it is not a run of the mill; I would not have called Dr. Kerr if the man had surgical privileges. He could have taken the hospital, so far as I was concerned.

Miss Tew had morphine at 8:15 p. m. and I examined her shortly after 9:00 p. m. She was still groggy and would remain groggy for four or five hours.

Dr. Harvey F. Kreuzburg, a witness for the Defendants.

Direct examination.

By Mr. Leahy:

My office is at 7852 Sixteenth Street, Washington, D. C. I have been practicing medicine not quite two years. I

graduated from Georgetown in 1937, served my interneship in Garfield from 1937 to 1939. I recall the occasion when Miss Elizabeth Tew came to Garfield Hospital. I was on duty as interne on surgery. I saw her around 8 or 9 o'clock and made an examination of her. At that time I took a history from her. She had been having discomfort in her pelvis, moderate pain in her right lower quadrant, and some backache. She told me she had been examined by a Dr. Selders who told her that he thought something was wrong with her appendix and that her uterus was misplaced, retroverted, and that surgery was indicated, and that at the time such surgery was performed he would remove the appendix and suspend the uterus or any other pelvic pathology that needed correcting. Following the receipt of her history I made an examination of her and concluded that she might possibly have a sub-acute appendicitis, but not an acute one, and I couldn't express an opinion about the pelvic pathology because I had not done a bimanual examination. There was no condition at that time that indicated an immediate operation. When I examined Miss Tew no morphine had been administered to her. I didn't see her leave the hospital. I didn't have any conversation about the case with Dr. Selders that evening.

Cross-examination.

By Mr. Lewin:

Q. Dr. Kreuzburg, you mean to tell this jury that Miss Tew told you all this business about the inverted uterus and that Dr. Selders would take out her appendix casually when he happened to operate on her for the other trouble?

A. That's what he did tell her; that's what she told me, anyway. I took her history and asked the patient those questions.

Q. Look at your history and see if—did you write the history down as you took it from her?

A. I don't remember as I—I took the history and went outside and wrote it down.

Q. Is it your custom to write up a history of the patient as she gives it to you?

A. Well, yes.

Q. Is that right? Did you write in your history that this lady was there for this inverted uterus situation?

A. No.

Q. And that this——
A. I just wrote down her symptoms.
Q. Did you?
A. Past history.
Q. All right. Let us see your history. * * * You told us some things which Miss Tew told you and which you said you put into her history.
A. No; I don't believe so. She told them to me. I did not necessarily put them into the history. I put her symptoms and her physical examination into the history.

The history written by the witness was read to the jury, as follows:

"Chief complaint: Pain in R. L. Q. Present illness: Attack began just week ago. The pain at onset was in the R. L. Q. and has remained so. She has had several episodes of nausea and vomiting the day following the onset but has had none since. No previous attacks. Past history: No serious illnesses. No operations. Respiration negative. Cardiovascular negative. Genito-urinary-severe dysmenorrhea. Nothing unusual about the last period."

After the physical examination, my diagnosis was "sub-acute appendicitis." I didn't diagnose any feminine complaint because I didn't do a pelvic examination, as I was not allowed to.

Redirect examination:

On an acute appendicitis or sub-acute appendicitis a median line incision is not made, the common incision for appendicitis would be the McBurney incision if you are certain the patient has nothing but appendicitis. If a pelvic pathology is suspected an incision is made in the mid-line, that is the center of the abdomen. You cannot use a McBurney incision to do pelvic surgery, although with a pelvic incision you can remove the appendix.

Recross-examination:

The mid-line incision is proper surgical technique if the surgeon wishes to remove an acute appendix and also suspects that there may be other conditions in the pelvic cavity.

Dr. Robert M. Bolton, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I am a practicing physician in Washington. I graduated from George Washington Medical School in 1931 and had an interneship at Garfield Hospital from 1931 to 1932. I recollect Gov. Ex. 584 as papers concerning the case of Miss Elizabeth Tew at Garfield. I would have been the anesthetist in the case. I saw Miss Tew that evening at the time Dr. Dugan and I went up with the release statement for her to sign. I went into Miss Tew's room on that occasion. She was in bed, a man and woman and Dr. Selders were in the room. Dr. Dugan asked Miss Tew to sign the release. She was first willing to sign the statement and then her two friends and Dr. Selders urged her not to sign it, giving as a reason that she had had morphine and wasn't in her right mind. When Miss Tew told Dr. Dugan she wouldn't sign it he said "Allright," and Dr. Dugan and I left the room.

Cross-examination.

By Mr. Lewin:

Under ordinary circumstances Miss Tew should have been able to sign the release, in my opinion. You could give enough morphine to a patient so she would not be in condition to sign a release and I would not advise a patient signing a release if she were groggy from morphine.

Redirect examination:

The patient had one quarter of a grain of morphine and that is not enough morphine to make a person groggy under ordinary circumstances, and I didn't think Miss Tew was groggy. She was told by Dr. Dugan that she might remain in the hospital if she wished, as long as she desired.

Recross-examination:

I didn't examine the patient, didn't know how much pain she was suffering, and I had no reason to quarrel with Dr. Dugan's statement that he considered her in a groggy condition.

Mrs. Margaret Jones, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I am a Registered Nurse employed at Emergency Hospital, where I have been working since November, 1934. I identify Def. Ex. 3 as the record of Sara Abbott, a patient brought into Emergency Hospital on January 26, 1938. I personally remember the case, and when Miss Abbott was brought into the emergency room I took the record on her. I was informed by the patient of her name and address and that she had been struck by an automobile an hour previously, and complained of an injury to her leg. Dr. Phillip Smith was the doctor in the emergency room that took care of Miss Abbott. He ordered a pillow splint put on the injured leg because of the possibility of a fracture of the small bone, and an ice cap to the leg to take care of the swelling and relieve pain, and I put them on. Medication for the relief of pain was also ordered but was refused by the patient. I helped give her first aid in the emergency room, then the patient was admitted to the hospital proper, to a semi-private room.

In this case the ambulance received a call from the All-States Hotel and at 11 minutes past 10, 15 minutes later, Miss Abbott was brought into the emergency room. The injury to the patient was diagnosed by Dr. Smith as hematoma of the left leg, with a possible fracture of the left fibula, a small bone in the lower leg, for which treatment an ice cap to the left leg was provided, a pillow splint was applied, codine refused. A pillow splint is a pillow put around the leg and tied securely with bandages to immobilize the part. The patient was admitted to the service of Dr. William Marbury, a member of the staff of Emergency. Dr. Otis Snyder took her history, and he is now in the Army.

Cross-examination.

By Mr. Lewin:

Dr. Phillip Smith was an interne who directed me to administer first aid to the patient, which I did. After leaving the emergency room the further treatment prescribed for her was as follows: "Remove the pillow splints; elevate leg; apply continuous cold compresses. Regular diet."

The next morning the patient was seen by Dr. Marbury, who ordered an X ray.

DR. SAUL HOLTZMAN, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I am a practicing physician in Washington. I graduated from George Washington University in 1937, interned at Garfield Hospital from June, 1937, to June, 1938. I identify Def. Ex. 1 as the official record of Garfield Hospital of the patient Miss Sara Abbott, admitted January 27, 1938. I saw Miss Abbott in the hospital and examined her personally. She had been X rayed before I saw her. The X ray showed there was no evidence of fracture to the bones of the upper two-thirds of the right leg. I attended her while at Garfield. The nurses kept a record of the patient while she was in a ward. From my examination of the patient I say she was comfortable, not acutely ill, and was able to give a coherent detail of her admission to the hospital. There was no evidence of any fracture. There was some tenderness over the outer portion of the right leg, but no symptoms of any fracture whatsoever, so far as the physical examination went. The rest of her examination was essentially negative. By "negative" is meant no abnormal finding. The history I obtained from the patient was as follows: She was struck by an automobile while crossing the street, falling to the ground, didn't lose consciousness, was helped to her feet; complained of pain in her right leg and was taken to Emergency Hospital.

Cross-examination.

By Mr. Lewin:

The patient remained in Garfield for three weeks. She was under the care of a hospital physician all the time, and was in bed most of the time.

Def. Ex. 1 was received in evidence and read from to the jury, as follows:

"Miss Sara Abbott, residence All States Hotel. She had a mark made by the nurse Miss Kemble of 98.4. Ice cap

to right leg. Enema. Sodium luminal. Foot made comfortable by cotton pad. Medication given; slight pain in leg. Dozing at intervals; sleeping.

Friday"—the next day—"refuses medication for discomfort. Quiet. Apparently sleeping. Quiet. A fairly good night.

Next day: Good results. Apparently sleeping. Sleeping. Quiet.

Next day: Fairly good day.

Saturday: Bath given. Evening care. Summary: Appetite fair, good day.

Sunday:" Same treatment down through "Apparently sleeping, appetite good.

Monday: Quiet. Sleeping. Good day.

Tuesday: Sleeping, slept well; patient's condition seems good this morning. Appetite good. Reading. Appetite good. Comfortable". These entries are made at different times of the day. "Eight o'clock; resting quietly. Summary: Appetite good; good day.

Tuesday:" the same. "Sleeping, sleeping, slept well. Comfortable; good day; slept good.

Wednesday: Appetite good. Quiet."

And then the final entries:

"Quiet and hot water bottle to leg and knee. Sleeping.

Summary on third day of February: Good day. Sleeping, a good night.

Friday: Sleeping; a good night. Patient's condition seems good this a. m. Reddened area on leg decreasing. Seems softer. Reading; quiet; no complaint." Summary of the day was: "Good day.

Saturday: Sleeping, again, again, comfortable; appetite good; comfortable." Apparently sleeping continuously through the next day, in same manner. "Summary: Appetite good, sleeping; quiet; resting quietly, sleeping, good day. Sleeping, appetite very good. Patient has two blisters on leg, apparently from heating pad; patient is up in chair."

Mr. Lewin: When was that?

Mr. Leahy: That is February 8, 1938.

"Cradle placed on bed and light bulbs inside. Patient comfortable in bed. Appetite good. Reading. Quiet. Appe-

tite good. Transferred to another bed. Apparently comfortable." She is resting quietly at 8 o'clock. "Ten o'clock: Asleep. Patient's condition seems good. Appetite good. Comfortable. Reading. Comfortable" after reading. "Comfortable at 8 o'clock. Quiet at 10 o'clock. 10:45 unable to sleep due to heat from cradle but refused amatol. Good day."

Same way Thursday, the 10th.

"Appetite good. Quiet. Comfortable. Resting. Reading. A good day.

Friday. Appetite very good. Reading. Comfortable.

Saturday, the 12th: Appetite good. Quiet. Sleeping. Summary: Appetite good. Sleeping.

Sunday, the 13th: "same entries. "Appetite good; patient up in chair; good day.

14th: Summary: Comfortable; apparently sleeping well. Sleeping. Good day.

16th: Comfortable, sleeping: Summary: Appetite good; patient walking around room. Good day, and night.

17th: Patient up in chair; reading; appetite very good.

17th: Discharged."

Dr. William D. Marbury, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I am a practicing physician in Washington and have been since before the last war. I graduated from the University of Virginia in 1909, interned first at New England Memorial Hospital at Baltimore, was a resident for two years at Providence, and then went overseas. During the war I was in the British service for two years as an American officer loaned to the British Army. I specialize in surgery. I am on the regular staff at Emergency and have been since 1922, and have the surgical service for four months out of the year. Unattached patients, those patients without a private doctor, are given treatment by the regular staff gratuitously except in compensation or liability cases. I identify Def. Ex. 3 as the official record of Emergency Hospital of Miss Sara Abbott. They show the treatment rendered to that patient. The emergency card shows the pa-

tient was gone over generally by one of the internes, who ordered a pillow splint and some codine, which the patient refused, and she was sent to a semi-private ward. The patient was admitted at 11:30 p. m.; the pillow splint was removed and an ice cap or compress applied. The usual things were done: A specimen was taken; she was given codine grain one and aspirin grains ten, and then some luminal, and an X-ray was ordered. At 2 p. m. the next day she was transferred to Garfield Hospital.

The only thing you could do in a case like that would be to give rest, excluding the possibility of a fracture, and make the patient comfortable. If the fibula had been broken it would not have been necessary to set it unless the large bone was also broken. Everything that should have been done for the patient was done for her while at Emergency and she signed a release slip on January 27, 1938, and left the hospital against the advice of the physicians.

Cross-examination.

By Mr. Lewin:

I was not called and did not see the patient until 10 o'clock the morning after her admission when I was making my rounds. With the exception of the surgical interne the patient had not seen a surgeon from the time she was admitted until I made my rounds the following morning.

Q. It says she had a fairly good night. That is the way the doctors talk, not the way the patient feels. Now, it is usual in a case of this character for the patient to suffer from shock and distressed state of mind, is it not?

A. I think you have to separate those.

Q. Will you, then: Isn't it usual to suffer from both, Doctor?

A. From the appearances and the history of this case I wouldn't say, if that leg was put at rest, there would be a great deal of suffering.

Q. This patient was a fairly elderly lady?

A. She was 65 (examining document).

Q. She had been knocked down on the street, brought to your hospital in an ambulance, and she was suffering somewhat, and she wasn't sleeping very well that night, as the history shows; and she remained in Garfield Hospital three weeks after that time, receiving daily treatment, as her

history shows. Would you say that the chances are she was suffering from a great deal of mental distress on the night of her admission to the Emergency?

A. I wouldn't say necessarily. It would depend somewhat—you hitch it up with staying three weeks at Garfield, but apparently she didn't get much hospital treatment there.

Q. You say that from hearing the history read this morning?

A. Yes, and knowing of the case.

Q. Now, if a patient like that brought into a hospital late at night asked for her own surgeon, do you think that would be normal?

A. Yes.

Q. And wouldn't the fact that she could have her own surgeon be conducive to giving her a most restful time in the hospital and to a more rapid recovery?

A. I can't answer that; it would with some people. Some people do not know their surgeons; they know their medical advisers much better; they do not know who their surgeons will be.

Q. This lady didn't know how good you were, Doctor; didn't know anything about you?

A. She never did know anything about me.

Q. You had never known her before?

A. No.

Q. But suppose she asked for another doctor, one that she did know about and had confidence in. Don't you think that if she had been able to procure that doctor, such a doctor, she would have been relieved mentally and she would have been much more comfortable? Don't you think so?

A. I think she could have had any physician on the courtesy staff of the hospital.

Q. But suppose she asked for one not on the courtesy staff, one she knew. Don't you think that might have helped her case?

A. Your guess is as good as mine; I don't know.

Redirect examination:

Q. Was that patient what you call an emergency case from a medical standpoint?

A. Well, that depends on how you look at an emergency case. She was hit by an automobile, and until you find out something about that you have to consider that as emer-

gency. As it turned out you certainly wouldn't call hers a very grave emergency.

Q. And was there anything unusual about her in calling for a doctor who was not on the staff and being told he could not practice in that hospital?

A. No, sir.

Q. How long have you known of that rule to be in effect?

A. I couldn't tell you; it has been some years. It has been, I reckon, ten years, or thereabouts. Well, I say that, but actually that was true in Baltimore, that was in 1910; I thought at one time I would stay in Baltimore and practice there, and I made some connections toward getting on the courtesy staff of one of the hospitals, and I couldn't do anything until I could. That was 20 years ago.

Q. And that is true, so far as you know, throughout the United States?

A. There are exceptions in the smaller towns: they have what they call "open hospitals", where anybody can come in and do anything.

Q. But in the municipal centers or larger hospitals do they have courtesy staffs?

A. I think almost universally, and only those on one of the staffs may practice in such hospitals.

Recross-examination.

Q. Isn't it usual to make exceptions in urgent cases?

A. I couldn't tell you that because they have a lot of emergency hospitals, and in a good many hospitals so many are emergency cases; I think that is taken care of by the staff.

Q. This wasn't the kind of a case that would have called for any extraordinary skill to treat it?

A. No, I don't think so.

Q. The presumption would be, would it not, that it could have been satisfactorily treated by any graduate surgeon?

A. This particular case would have been all right if it hadn't been treated at all.

Q. It really would not have been subjecting her to any great risk to permit her to have any doctor she desired, would it?

A. Not a bit.

Q. And wouldn't have hurt the hospital if the doctor she wanted had been allowed to come in and prescribe medicine for her?

A. "Hurt": How do you mean?

Q. Would it have hurt it in any way, the hospital to have permitted another doctor not on the staff to come in?

A. I think that is covered by a rule. I do not think it is a matter of having a doctor come in that is forbidden, but it is taking the patient as a patient and treating her. To do that you have to be on the courtesy staff.

Q. Suppose her doctor had been permitted to come there and prescribe for her the ice bags and to buoy her up a little bit, that wouldn't have hurt the hospital, would it?

The Court: That is going into psychology rather than medicine, isn't it?

Mr. Lewin: Yes, but as to the effect on the patient I thought the doctor might be able to answer.

The Court: I don't think this gentleman is holding himself out as a psychologist.

By Mr. Lewin:

Q. Of course you are a member of the District Medical Society and the American Medical Association?

A. Yes.

Q. And the Washington Academy of Surgery?

A. Yes.

Q. I think you are president of it?

A. Yes.

Dr. Frederick John Carpenter, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I am a physician attached to the Reformatory at Lorton, Virginia. I graduated from McGill University and interned at Emergency from 1936 to 1938. I was on duty when Miss Sara Abbott was brought into the hospital. I saw her after she was assigned to a room, observed the treatment given her, saw her before she was transferred to Garfield when I made the rounds with Dr. Marbury. An X-ray was suggested but she left the hospital before it could be arranged. From a review of the treatment given the patient I state it was all proper treatment and that, in my opinion, everything that could possibly be done was done for her.

Dr. William Dick Cutter, Defendant, a witness for the defendants.

Direct examination.

By Mr. Leahy.

I reside in Chicago; am secretary of the Council on Medical Education and Hospitals of the A M A and have been for nine years. I am a graduate doctor; graduated from Yale in 1899 and from Johns Hopkins in 1905; interned at the French Hospital in New York City, 1905-1906; engaged in private practice at Bisbee, Arizona, from 1906 to 1910, taught medicine at the University of Georgia, 1911 to 1919, was secretary to the Board of Medical Examiners in New York State, 1919-1923, Dean of the Medical School of New York Post-Graduate School of Medicine, 1923-1928, and Dean of the Medical School, University of Southern California, 1928-1931.

The Council on Medical Education and Hospitals of the A M A was formed in 1904 by resolution of the House of Delegates and reports directly to them. The function of the Council is to examine and study medical schools and hospitals in order to determine what are proper standards of performance in the field of medical education and hospital education, and having formulated reasonable standards of performance with respect to medical education these are submitted to the House of Delegates for ratification, and then when the standard is set up we again examine these institutions to see whether they fully conform to the standard. If so, their names are published on our list. These examinations are made only upon the request of the institution who wishes to be included in our list.

The House of Delegates of the A M A is chosen in the following manner: Each state medical society chooses a certain number of delegates in proportion to the number of members, just exactly as members of the House of Congress are selected on the basis of population, and those delegates meet once a year, and they comprise the legislative force of the A M A. Each state has a state society and the District of Columbia also has a society.

The chairman of the Council is Dr. Ray Lyman Wilbur, President of Stanford University, and the other members are all practicing physicians. The principal work of the Council is the visitation of all schools and hospitals request-

ing examination to help them qualify for inclusion in the list which we publish. Sixty-four four-year medical schools in the United States are now on the approved list. Of the 6,000 hospitals on the A M A register 1,000 have asked for the Association's approval for their educational training of internes and residents. Those hospitals training internes and residents are carried on a separate list. When these hospitals request approval they are examined and an analysis is made of each hospital for the purpose of bringing it up to standard to insure proper supervision of training of internes and residents. There are 700 hospitals approved for interne training and some 300 or 400 more approved for the training of residents in specialties. An interne is a man who has just completed his undergraduate course, who goes into a hospital to gain experience. After he has served his internship of a year, year and a half, or two years, if he desires further training he is classified as a resident, and residents are usually assigned to specific departments such as medicine, orthopedics, obstetrics, and so on.

There were 19 hospitals in the District of Columbia as of 1937, 12 were approved for interne training; two—Columbia and Episcopal—were approved for training of residents; these two hospitals are not approved for interne training as they are special hospitals providing special services. On receiving a request for approval a printed form calling for information is sent the hospital, along with an application for approval. When these papers are returned completed, a card is made out and one of the doctors on the A M A hospital staff visits that hospital, checks the information furnished, makes an investigation, and then prepares a report concerning the hospital. A copy of the report is sent to the hospital for comments or correction. At the next meeting of the Council the report with recommendations is submitted to the Council and the Council acts to give or withhold approval. The Council maintains a staff of investigators to examine hospitals and medical schools. A different investigation is needed in a medical school, as that is a very complicated situation and covers four-year periods, whereas the program in a hospital covers only a year.

The standards formulated by the Council are known as "Essentials," and the hospitals are examined to see whether they can conform to these essentials and can give

proper education to internes. When the Council was created in 1904 there were a great many poor medical schools with no supervision over them. The Council was formed to exercise some degree of supervision, get the facts and make the facts known. The same situation prevailed concerning hospitals, and the object was to secure the facts concerning the hospitals and their standards, for the purpose of letting prospective internes know the situation. The Council only collects data and information, and publishes the same for educational purposes. As secretary, I direct investigations of medical schools and hospitals. The Council publishes the factual data obtained in the Educational Number of the A M A Journal; a little reprint known as "The Essentials of Medical Schools" is also published, which constitutes the basis on which medical schools are judged, as to whether they should be included in this list or not. The information is published and made available also in what is known as the Hospital Number of the Journal and in "Standards Applicable to the Registration of Hospitals." In addition there appears in the annual Hospital issue of the Journal a register of hospitals. In the District of Columbia, besides the private hospitals, the Naval Hospital, Walter Reed Hospital, Gallinger Hospital, and Veterans Hospital—Government institutions—have applied for approval of the A M A.

Def. Ex. 11 is the "Essentials of a Registered Hospital" prepared by the Council on Medical Education and Hospitals of the A M A. Def. Ex. 12 is "Essentials of a Hospital Approved for Training Interns." Def. Ex. 13 is the "Essentials of Approved Residencies and Fellowship."

(Def. Exs. 11, 12, and 13 were received in evidence.)

I recall the Mundt resolution which was passed in 1934. Following the passage of the Mundt resolution the Council on Medical Education and Hospitals took it under advisement. The Council meets three or four times a year, at the meeting of the A M A, at the Congress on Medical Education in Chicago and sometimes in New York, Washington or Denver, or some other convenient place. Early in the history of the Council it was felt desirable to give more information to the public and the profession concerning problems of medical education, and so a meeting was held in Chicago to which all persons interested were invited. At the meeting or series of meetings, papers are read on vari-

ous problems on medical education with discussions. Because the question of medical education is so closely related to the question of licensure, the various state licensing boards are invited to participate with us in the Congress. The official title of this meeting is "The Congress on Medical Education and Licensure." The Congress is an approved educational program of the Council.

In October, 1934, the Council voted to send copies of the Mundt resolution, to all hospitals approved for interne training so they might know what the sentiment was of the House of Delegates. Immediately following the meeting in October, 1934, the Council instructed me to send a copy of this resolution to all of the interne hospitals, which I did. Def. Ex. 14 is one of the letters which I sent pursuant to this action of the Council. About 700 hospitals were circulated and were advised of the Mundt resolution and no attempt was made by the Council to send letters similar to Def. Ex. 14 to any other hospitals than ones which had been approved for interne training.

Def. Ex. 14 was received in evidence and read to the jury, as follows:

"American Medical Association

535 North Dearborn St.

Chicago

Members:

Ray Lyman Wilbur, M. D., Chairman, Stanford Univ.
Reginald Fitz, M. D., Boston.
Merritt W. Ireland, M. D., Washington.
Charles E. Humiston, M. D., Chicago.
Frederic A. Washburn, M. D., Boston.
J. H. Mussler, M. D., New Orleans.
Fred Moore, M. D., Des Moines.

Staff:

H. G. Weiskotten, M. D.
Homer F. Sanger.
Carl M. Peterson, M. D.
Oswald N. Anderson, M. D.
Fritjof H. Arestad, M. D.

December 31, 1934.

1. Your attention is called to the fact that in recent years applicants who have been unsuccessful in gaining admission to American Medical Schools have migrated in large numbers to Europe. At the present time those who have graduated are returning to the United States and seeking appointments as interns. The "Essentials in a Hospital Approved for Interns", ratified by the House of Delegates of the American Medical Association, require that interns be selected from among the graduates of schools approved by this Council. Since the Council has never inspected or classified schools outside of the United States and Canada, it is evident that European schools do not fall within this category.

Furthermore, for economic reasons, there is just now a shortage of internships and some of the graduates of Class A schools have been unable to find positions. In order that our own students may not be deprived of an opportunity to complete their educations by serving their fifth years as interns, it is necessary that hospitals approved by this Council limit their choice of interns to graduates of recognized American schools whenever such are available.

However, should suitable graduates of Class A schools be unobtainable, the standing of a hospital will not be jeopardized by the appointment of a graduate of a European university provided the hospital assumes full responsibility for determining the identity of the candidate, the authenticity of his credentials, and that his professional qualifications are not less than those of the graduates of our own schools. It is recommended that, in order to protect themselves, such candidates be required to have passed the licensing examination in one of our states or Parts I and II of the National Board of Medical Examiners.

2. In hospitals approved for the training of interns, the professional standing of the members of the staff is a matter of importance. For your information I submit a resolution dealing with this subject adopted at Cleveland last June:

Resolved, That it is the opinion of the House of Delegates of the American Medical Association that physicians on the staffs of hospitals approved for intern training by the Council on Medical Education and Hospitals be limited to members in good standing of their local county medical societies and that the House of Delegates requests the Council on

Medical Education and Hospitals to take this under advisement.

Sincerely yours, William D. Cutter."

The last paragraph of Def. Ex. 14, beginning with the word "Resolved," is the Mundt Resolution. The Essentials referred to in the letter is Def. Ex. 12. The reason for the shortage of internships as mentioned in Def. Ex. 14, was that during the years of the depression, 1934 for example, a great many men who had served an internship were reluctant to go into practice and asked the hospitals if they could not stay on for a second year, which many of them did, staying maybe two or three years. That meant that there was not a normal number of vacancies to take care of the graduates of medical schools and they found it very difficult to secure internships. In order that these graduates might not be prevented from getting the opportunity to complete their education through the selection of graduates of foreign schools for internships, we sent this notice to the hospitals telling them that graduates of our own schools should be appointed wherever suitable candidates were available and graduates of foreign schools should not be appointed unless they had found that suitable candidates in our own schools were not obtainable.

In 1909 the classifications of medical schools were divided into three groups; Class A were considered acceptable; Class B not acceptable but which might become so; and Class C were hopeless and could not qualify. A, B, and C classifications were continued until 1928 and at that time all schools placed in Class B had closed, merged with other schools or raised their standards to those of Class A. The number of Class C were very small, and as they were very bad schools the Council decided there was no use in giving further publicity to bad schools, and discontinued the classification as Class C. Class A is now synonymous with "Approved School."

Following December 31, 1934, when we had occasion to inspect a hospital to determine its qualification, and would send them a report, it was routine practice to refer to the Mundt resolution, so the hospital might have it as a matter of information. There came a time in 1937 when five hospitals in the District of Columbia were examined by the Council. Nearly all the Washington hospitals had been examined at some time and some had been on the approved

list for a long time. Practice in examining hospitals from the time the application is received is variable because it depends on the demands which are made upon us for inspection. Re-examination of hospitals from time to time has to be fitted in with the itineraries planned by our inspectors in order to cover requests constantly received, so if we are called to St. Louis to visit several hospitals, we would make inspection of two or three others so we would not have to return to St. Louis right away. The occasion which induced the investigations and examinations of the five Washington hospitals in 1937 was a letter dated February 3, 1937, received by me from one of the professors of the faculty of Georgetown University, Dr. Cahill, stating he wanted to secure the Council's approval for two residencies, one at Georgetown and one at Providence. Def. Ex. 16 is Dr. Cahill's letter.

Def. Ex. 16 was received in evidence and read to the jury, as follows:

"Dr. James A. Cahill, Jr.,
2607 Conn. Avenue, N. W.,
Washington, D. C.

Feb. 3, 1937.

Dr. Ray Lyman Wilbur, Chmn., Council on Medical Education and Hospitals, American Medical Association, Chicago, Illinois.

DEAR DR. WILBUR:

As Director of the Department of Surgery at the Georgetown University School of Medicine, I am writing to make a formal application regarding the Residency in Surgery for two hospitals which are affiliated with the Georgetown University School of Medicine.

The Surgical Department utilizes four hospitals, two of them, namely Emergency and Gallinger are on the approved list for a Residency in Surgery. However, I am most desirous of having the approval of the American Medical Association for the resident position in surgery at both the Georgetown University Hospital and Providence Hospital. At each of these hospitals, a resident surgeon is on duty and his appointment is for one year. However, we are anticipating prolonging this term to a two years one. At George-

town the resident is under the direct supervision of the Staff and therefore receives adequate instruction. This is also true at Providence Hospital. There is also a large amount of clinical work which has increased considerably during the past few years. Would you be kind enough to place this before the Committee? If any further information is desired, I will be glad to furnish it upon your request.

Very respectfully, James Cahill, Jr., Director of Department of Surgery, Georgetown University School of Medicine."

Dr. Cahill's letter was replied to by Dr. Peterson, one of our inspectors particularly charged with work in connection with interne hospitals.

It was marked Def. Ex. 16A and read to the jury as follows:

"Feb. 10, 1937.

"Dr. James A. Cahill, Jr., Director of Department of Surgery, Georgetown University School of Medicine, Washington, D. C.

DEAR DR. CAHILL:

Your recent letter to Dr. Ray Lyman Wilbur has been referred to me for reply.

Approval of residencies by the Council is based on regular application, convenient forms for which are enclosed. Since two institutions are involved, it will be necessary to submit application for each and it will be much preferred if you submit the information yourself as responsible for the type of training which these residents will receive.

Ordinarily, upon receipt of satisfactory information, a visit is arranged by a member of the Council's staff in order that all details of the teaching program may be discussed.

The duplicate copies also enclosed are meant for the files of the hospitals under consideration.

Very truly yours,"

A reply to Dr. Peterson's letter was received from Dr. Cahill, Def. Ex. 15.

Def. Ex. 15 was received in evidence and read to the jury, as follows:

"James A. Cahill, Jr.

March 18, 1937.

Dr. Carl M. Peterson, Council on Medical Education and Hospitals, American Medical Association, Chicago, Illinois.

DEAR DR. PETERSON:

As you suggested, I am forwarding the applications for approval of the Surgical Residency for both the Georgetown University Hospital and Providence Hospital of Washington, D. C.

I will be only too glad to meet a member of the Council Staff to discuss any details which they may request.

Appreciating their consideration, I am

Very sincerely yours, James A. Cahill, Jr., Director of the Department of Surgery, Georgetown University School of Medicine."

Enclosed with Def. Ex. 15 was the application blank from Georgetown University Hospital, read from to the jury, as follows:

"Bed capacity, 210; Residencies requested, Surgery, (1) and the next information is as to what time of the year appointments are made. "On or about February for duty effective by July 1 of each year. Length of residency, 1 year but may extend to 2; Salary, $35 per month." The applicant "must be a graduate of a Class A Medical School and have served at least one year internship on a general rotary service." It is stated that the Georgetown University Hospital Staff is composed of members connected with the Surgical Department of the School of Medicine. "The Staff is amply qualified for instructing the resident, and in fact the resident surgeon is required to teach and serve as an instructor to various surgical groups assigned to the hospital." The names of the members of the staff were: "Dr. James A. Cahill, Jr., Professor of Surgery and Chief of Department of Surgery, Georgetown University School of Medicine. Dr. Fred R. Sanderson, Associate Professor of Surgery—Dr. Howard F. Strine—Dr. Robert E. Moran—Dr. Leon Martel—Dr. Frederick Fishback—Dr. Ralph M. LeComte—Dr. Waitman F. Zinn of Baltimore, Maryland."

Enclosed with Def. Ex. 15 was the application blank from Providence Hospital, read from to the jury, as follows:

"Bed capacity," 241; and the application for residency shows "Beds, 160—Occupancy, 95%". It states about the same information as the other; that the appointment will be made "on or about January for duty effective July 1 of each year." He gets $25 per month. Qualifications: "Must be graduate of Class A Medical School and must have served at least one year internship on a general rotary service." And "The Surgical Department at Providence Hospital is composed of four chiefs, and four associate surgeons. There is also a group of assistants in surgery who serve in the Out-Patient Department." The names of the staff are: Dr. Charles S. White, Professor of Surgery, George Washington University, Washington, D. C.; Dr. James A. Cahill, Jr., Professor of Surgery, Georgetown University, Washington, D. C.; Dr. Paul S. Putzki, Associate Professor of Surgery, George Washington University, Washington, D. C.; and Dr. Fred. R. Sanderson, Georgetown University, Washington, D. C."

When the applications were received the notation was made on a card of the institution and its location and what approval it asked for, cards being available to the hospital inspectors so they may plan a trip to reach a number of groups of hospitals close together. They are taken up in the order of the application or the urgency of the application. Internships and residencies are made from July 1st. The Council makes an effort to reach the hospital as soon as possible but appointments are usually a while in advance. Though an appointment is stated to be made in February the work of the inspectors was already laid out a couple of months in advance so that when the application first came in the inspectors would hardly get to them for a couple of months, as we have a large waiting list. Dr. Peterson was selected to make the examination of the Washington hospitals and came to Washington on the 11th of June, 1937. At that time we felt George Washington Hospital, the Sanitarium in Takoma and the Columbia Hospital were due for an inspection, as the Sanitarium had been examined in 1933 or 1934 and George Washington had last been seen in 1930. Columbia had never been regularly inspected. It had been approved for a residency in gynecology. The Sanitarium

and George Washington had been approved for interne training. I did not give any instructions to Dr. Peterson as to the number of hospitals that should be examined in Washington, when he made his trip to visit Georgetown and Providence and left that to his judgment and discretion. Dr. Peterson came to the Council about 1929. I received Gov. Ex. 295. At the time I received Dr. Cahill's request for an examination of Providence and Georgetown Hospitals I had not heard of Group Health and did not know there was such an organization in formation at the time. I had never read anything of or seen any writing about or heard discussions about Group Health. Major General Ireland's letter (Gov. Ex. 295) bears our date stamp of March 27, 1937. I know General Ireland and at the time he did not hold any position in the AMA but prior thereto he had been a member of the Council on Education for nearly 20 years. I don't recognize the handwriting on Gov. Ex. 295 but I instructed a copy to be sent to Dr. Leland and Dr. Woodward. The purpose of sending a copy to Dr. Leland was that he "was responsible for the conduct of a bureau which studied those matters, and I thought he might be interested in finding out something about it." I sent a copy to Dr. Woodward because "he had lived in Washington most of his life, and I thought he would be interested in knowing what was going on." On receipt of Gov. Ex. 295 I had it filed and had no further use for it. The name of Group Health was not mentioned in the letter. There was some reference to HOLC. I had no further communication from General Ireland or from anyone else following the receipt of Gov. Ex. 295 about Group Health. I had nothing further to do with the Ireland letter and had not seen it since I filed it until it was produced at this trial.

When Dr. Peterson was instructed to come to Washington to examine Georgetown and Providence Hospitals and such others in his discretion that had to be examined I had not heard of Group Health, did not know anything about it, had not read anything about it. I did not request Dr. Peterson to do anything with Group Health. I gave Dr. Peterson no special instructions in coming to Washington. This particular trip and the examinations were absolutely routine, with nothing at all to differentiate the trip for the Washington hospitals from the examination of hospitals made in any other city in the country. Dr. Peterson at that time was engaged solely in the examination of hospitals. I was re-

sponsible for all of the work of the Council but my particular activity was in the field of medical schools. After Dr. Peterson was told to go to Washington I did nothing at all personally with reference to the examination of Washington hospitals. The reports of Dr. Peterson's examinations of the Washington hospitals came to my desk. I recall seeing them and looked at the summaries, but I don't think I searched the entire reports. The Council took action on the recommendation made by me to the Council based on those reports. The Council had access to the reports. Following the results of the examination of the Washington hospitals, there was no difference whatsoever in the procedure followed by the Council with respect to those examinations, than would have been followed with regard to a report on any other hospital in the United States. The Mundt Resolution was not attached to the report sent to the hospitals but was referred to in the letter of transmittal. A copy of the report on each hospital was sent to it and along with the report went "the reference to the Mundt Resolution." The custom is that "Whenever we made an examination of a hospital and sent them a report of our findings, we sent also a letter calling attention to the high spots in the inspector's report and at the close of the letter we again cited the Mundt resolution."

Q. What was the result, if you know of any action on the part of the hospitals with reference to the Mundt Resolution?

A. Well, it would be difficult to remember, but I believe one of the hospitals adopted a rule that no one should be appointed to their staff who was not a member of a recognized medical society, and that if there were any members already on the staff they would be given a year in which to become members.

Q. I show you what purports to be a collection of correspondence, Dr. Cutter, I am calling your attention to this and ask if you can identify that correspondence in any way?

A. This is the correspondence we have had with the five hospitals visited by Dr. Peterson, after the visit had been completed and the report of the visit was submitted to them.

The Mundt Resolution was brought to the attention of the hospital only as shown on the correspondence and through the circular letter which was sent out in 1934 (Def. Ex. 14).

On August 27, 1937, in a letter to George Washington

Hospital, after quoting the Mundt Resolution I stated, "Analysis of the staff is included in the report. What possibility, if any, exists for the observance of this recommendation at George Washington Hospital." Columbia was asked, "Analysis of the staff is included in the report. What possibility, if any, exists for the observance of this principle in your hospital?" It was stated to Providence Hospital, "According to our analysis there are six members of your staff who are not affiliated with any of the constituent societies of the AMA" after I had drawn attention to the Mundt Resolution. On August 7, 1937, Georgetown Hospital was asked, "Analysis of the staff is included in the report. What possibility, if any, exists for the observance of this regulation?" * * * Other than what was contained in those letters to the hospitals nothing was sent to any one of them in connection with the Mundt Resolution. The language of the letters referred to has no connection whatever to Group Health. At the time the letters were written to the hospitals I had not heard of Group Health, did not know anything of it, had not read anything about it and had not been told anything about it. The purpose and intent of the questions asked in connection with the Mundt Resolution was to follow the recommendations of the House of Delegates made in 1934.

Q. What has been the policy of the AMA through your Council on medical schools and hospitals with respect to the Mundt resolution, throughout the country?

A. The action taken by the Council was to recommend that the resolution be sent to the hospitals for the purposes of learning what their reaction to it would be.

The AMA has never stricken a hospital off an approved list because it did not put in force the Mundt Resolution and has never withdrawn approval because of the failure of any hospital to adhere to the resolution. As a matter of fact there are very few hospitals on the approved list of the AMA which have exclusively members in such societies on their staffs and the great majority have not observed the Mundt Resolution. The AMA maintains a list of every doctor in the United States with reference to his qualifications and knows whether the hospitals have pursued the recommendation in the Mundt Resolution.

Anything I said or wrote concerning the Mundt Resolution to any hospital in the city of Washington had no con-

nection with Group Health. In my instructions to and my talks with Dr. Peterson, after he made examinations of the Washington hospitals, we did not talk about Group Health. At no time following the examination of the Washington hospitals did I do anything toward the restraint of Group Health or in preventing Group Health staff members from becoming members of the staff of the various Washington hospitals. The only thing I know that the Washington hospitals did about the Mundt Resolution is that "Georgetown took some action with reference to their membership," and I do not know how long the matter of staff membership was considered by Georgetown. The first time I heard of GHA was when I read an article about it in the Journal in October. It has been referred to as the Woodward article. After learning of Group Health I did not do anything to put pressure on a single hospital with reference to the Mundt Resolution.

The only defendants I know are Dr. Woodward, Dr. Christie, Dr. Fishbein, Dr. Groover, Dr. Leland, Dr. West and Dr. Yater. I don't know anybody in the Harris County Medical Society or in the Washington Academy of Surgery. I never attended a meeting of the District Medical Society. The first time I ever heard anything of the records and meetings of the District Medical Society was when I heard them read in court at this trial. The various bureaus of the AMA are quite separate. Most of them are administered by a director responsible to the Board of Trustees. The Council reports directly to the House of Delegates. The Council has three doctors who carry on work of inspection, one man not a physician, who assists in the management of the department and 15 stenographers and is pretty busy most of the time and I have to sign every day 25 to 50 letters, sometimes more.

I never met with Dr. West and Dr. Leland and Dr. Fishbein to discuss Group Health or what the AMA might do with Group Health. The AMA did not do anything concerning Group Health through the Council. I do not know of its having done anything other than the publication of the article in October, 1937.

The Trinity Hospital in Little Rock, Arkansas, is a hospital operated by a group of doctors, who sell not only hospital care but medical care. I wrote Gov. Ex. 248 to Trinity Hospital, as "we were maintaining our Register of Hospitals and information had come to us that doctors

who constituted the staff of this hospital had all resigned from the Medical Society, rather than face charges of misconduct, and we felt that if there was any question about the character of the work they were doing, we would like to investigate it and have some sort of an opinion whether the ground was sufficient to remove them from the Register."

The hospital was on the yearly register and when I wrote the hospital, I was trying to get additional evidence, as information had been received from the county society in Little Rock, and it was in order to get some affirmation or lack of affirmation, if possible, that I wrote to Dr. Scarborough. It was on the receipt of a document dated September 3, 1935, Def. Ex. 17, that I wrote Gov. Ex. 248.

Def. Ex. 17 was received in evidence and read to the jury as follows:

"Memorandum Re Trinity Hospital, Little Rock, Ark.

Dr. M. D. Ogden of Trinity Hospital, Little Rock, was in the office to talk about the hospital in reference to its registration. He said it was true that all of the members of the staff of Trinity Hospital resigned from the Pulaski County Medical Society a few years ago when the Medical Society was preparing to try them for participation in their plan of flat rate practice. He says that they later tried to appeal their case to the Council of the Arkansas Medical Association and the Judicial Council of the American Medical Association with the result that their appeal could not be heard because they were no longer members. He also said that they employed someone to travel around and introduce their plan and sell it, both to groups such as banks and other concerns and also to individuals, and insisted this could not in any sense come under the head of soliciting.

Dated September 3, 1936.

P. S. Dr. Ogden did not appear to have very specific information about the principles of medical ethics and was apparently not well informed on the proceedings of the House of Delegates. It was his impression that the delegates were told what to think. He was supplied the lacking information with regard to these matters.

H. F. S."

H. F. S. is Mr. Sanger in my office who looks after general office management and keeps up the registration. The year

1936 on Def. Ex. 17 is in error. The year 1935 is correct.

The following excerpt from Gov. Ex. 248, a letter from Dr. Cutter to Dr. Scarborough, dated Sept. 9, 1935, was read to the jury:

"In order that we may have reliable information on this point, will you be good enough to explain just what is the form of service in which you are engaged? Could you send me samples of your announcements and agreements? Do you employ solicitors to procure clients?"

On September 16, 1935, Trinity Hospital replied, Gov. Ex. 249, to Gov. Ex. 248. I did not have anything whatever to do in my official capacity or otherwise with the resignation of the doctors of Trinity Hospitals from the Pulaski County Medical Society, and prior to the receipt of this information, I did not know that these doctors had resigned from the Society. I did not have anything to do with the attempted appeal by these doctors to the Judicial Council of the AMA and had nothing to do with the Judicial Council in connection with the appeal. My understanding of this jurisdiction of the AMA over the action of a county or state society is "that if any member of the county society takes exception to an action of a county society he may appeal to the State Medical Society, and that State Medical Society may confirm or overrule the decision of the local medical society; and if he is dissatisfied with the decision of the state body, he may then appeal to the Judicial Council of the AMA for a final determination of the question." When I wrote on September 9, I did not have knowledge that these doctors had appealed to the Judicial Council. I didn't know exactly to what Dr. Scarborough referred in the second paragraph of his letter. I had some idea that there had been a controversy, but I did not know what the controversy was or what it was about. I afterwards learned that it was about this appeal he had taken from the County Society to the State Society and from the State Society to the Judicial Council. Dr. Scarborough wrote that the attitude of the AMA "has been so arbitrary, unreasonable and unfair that we feel disinclined to discuss the matter further." On September 23, 1935, I wrote Dr. Scarborough another letter, Gov. Ex. 256, stating "Thank you for your letter of September 16. One of the duties assigned to this Council on Medical Education and Hospitals is to make a register of hospitals accepted by the American Medical Asso-

ciation. I am pleased to send under separate cover a copy of the register with our compliments. I need not tell you the benefits that come to a hospital through recognition in the register and the favorable publicity it is given, since the register is published in every issue of the American Medical Association Directory and in the special Hospital Number of the Journal of the American Medical Association." Most everybody that is interested in the hospitals uses our directory as its source of information; and if a hospital is listed there they can find out something about it and if it is not listed, it is difficult to find it out without personal correspondence. I also sent a copy of the "Essentials of a Registered Hospital" and a copy of the Principles of Medical Ethics of the AMA. I did not receive a reply to my letter supplying me with the explanation I sought.

Q. (Reading further from Gov. Ex. 256):

"Our object in writing to you was to extend to you the privilege of speaking for the hospital and particularly supplying information on those points against which some objections have been made and which practice, if they do exist and if persisted in, would jeopardize the registration of the hospital."

Did you ever receive a reply to that letter?

A. No, sir.

Q. How long did you wait for a reply?

A. Well, the register was published the following month.

Q. Have you any reply from Dr. Scarborough supplying you with any explanation?

A. No, sir.

Q. When was it, then, that that hospital no longer appeared upon the register?

A. In March of 1936.

The Directory appeared in June of 1936 and following its appearance I had further correspondence with Trinity Hospital. On August 11, I received a letter (Gov. Ex. 252) from Caroline P. Snyder, asking why it was that the name of the hospital did not appear in the Medical Directory. I replied, Gov. Ex. 253, to Miss Snyder's letter, stating:

"As stated before, it is my impression that the difficulty is between the physicians who practice in your hospital and organized medicine, particularly the County Medical So-

ciety. It is my understanding that the members of the staff of Trinity Hospital resigned from the Pulaski County Medical Society, later appealing to the Council of the Arkansas Medical Society and to the Judicial Council of the American Medical Association. It is my understanding also that both of these appeals were denied on the ground that the men had already resigned, and therefore, not being members, the Council referred to would not be in position to hear an appeal from them. In this situation it appears to me that the first step should be taken by the physicians referred to.

Regarding other hospitals, including railroad hospitals, the situation is somewhat different, and while it is being dealt with as judiciously as possible, I do not know that a solution of their case would materially affect the situation in which Trinity Hospital finds itself."

The fact that Trinity Hospital was engaged in contract practice was not the reason, but it was to determine whether or not these men had violated the rules of the Medical Society, with reference to the house-to-house solicitation of patients and canvassing for business and other things which had been reported in the memorandum which we had. The AMA has never taken any attitude with reference to contract practice per se, nor has the Council with reference to any hospital that conducts contract practice and there is no policy in force or was in force in 1935 which would cause removal from the register of any hospital engaged in contract practice, or with reference to a physician engaged in contract practice. I have engaged in contract practice and maintained my membership in the AMA.

I wrote Gov. Ex. 232 to the Mt. Sinai Hospital in Milwaukee. At the time I wrote the letter it had come to my attention that certain physicians had been expelled from the Medical Society of Milwaukee through participation in the Milwaukee Medical Center and continued as members of the attending staff of Mt. Sinai Hospital. In Gov. Ex. 232 I called attention to the Mundt Resolution and asked "What possibility, if any, exists for observance of the principle laid down in this resolution?"

I received from the hospital Gov. Ex. 233 in reply, in which the hospital stated in regard to the controversy between the Milwaukee County Medical Society and the Mil-

waukee Medical Center, Mt. Sinai has been forced, because of fear of itself being involved in legal complication, to take the stand that until the matter is adjudicated it is deemed advisable to take no drastic action. I acknowledged receipt of Gov. Ex. 233 (Gov. Ex. 247).

I wrote the hospital again on October 24, 1936, Gov. Ex. 244, stating, "We have been informed that the Council of the Wisconsin State Medical Society has upheld the action of the Milwaukee County Medical Society in expelling certain physicians for unethical behavior. How does this action affect Mt. Sinai Hospital? Are all members of the staff in good standing with the Milwaukee County Medical Society or eligible for membership in that society?"

I did not have personal knowledge or engage in any way in the proceedings by either the Milwaukee County or the Wisconsin State Medical Societies.

Gov. Ex. 245, dated October 30, 1936, is a reply to Gov. Ex. 244, in which the hospital advised, "The situation at Mt. Sinai Hospital is still in status quo." I then wrote Gov. Ex. 234 on November 27, 1936, stating, "We have now received word from all hospitals in Milwaukee concerning the status of the expelled doctors," that the matter will be reviewed by the Council in February and asked if any changes occurred at Mt. Sinai we would be glad to be kept advised. The Council, while the matter was in adjudication, did not take action.

Then I received Gov. Ex. 216, dated October 22, 1937, stating in substance that Dr. Thompson had heard nothing, requesting information, and stating, "We have withheld decision in regard to physicians of the Milwaukee Medical Center pending action by the AMA." On November 3, 1937, I wrote to Dr. Thompson (Gov. Ex. 217) stating that "The matters about which you inquire are still under discussion by the Judicial Council of the AMA," and I would advise him when a decision was reached. On April 6, 1938, Dr. Thompson wrote me (Gov. Ex. 206) inquiring whether or not there was any change in the situation "concerning compulsory county medical society membership on approved voluntary hospital staffs." I think Dr. Thompson, when he used the words "compulsory county medical society membership" was awaiting the decision from the Judicial Council. I do not know what the rule of the Milwaukee County Medical Society was with reference to membership

on staffs of hospitals of Milwaukee County and I was not concerned in any way about it.

On April 13, 1938, I wrote Gov. Ex. 207 stating, "We have recently been informed that the Judicial Council of the AMA has sustained the action of the Milwaukee County Medical Society in the matter of certain physicians recently expelled from society membership. Accordingly, we shall be anxious to know what action Mt. Sinai Hospital is taking." Mt. Sinai was a hospital approved for interne training. On April 15, 1938, Dr. Thompson replied (Gov. Ex. 208) stating that he noted a reference "to the resolution of the House of Delegates pertaining to staff appointments in hospitals approved for interne training" mentioned in my letter of July 17, 1936. He quoted the Mundt Resolution, stating he noted it was referred to the Council on Medical Education and Hospitals, and "we are wondering whether or not the Council on Medical Education and Hospitals has taken any definite stand regarding this matter." The Council has never taken any other stand than that I have already described concerning the Mundt Resolution. Dr. Arestad of my staff replied with Gov. Ex. 211 to Gov. Ex. 208, and that letter "truly expresses the attitude of the Council on Medical Schools and Hospitals" and states:

"May I say, first of all, that the American Medical Association does not have, nor does it assume, legal authority over any hospital, and consequently does not presume to dictate how hospitals should conduct their affairs. If, however, a hospital desires the endorsement of the Council it should be willing to comply with the principles which the American Medical Association considers necessary. One of the basic requirements is that the medical staff should be composed of regular physicians properly qualified as to training, licensure, and ethical standards. When a hospital, therefore, employs physicians expelled from County Medical Society membership on the basis of unethical conduct, it is obvious that the hospital's standing is involved not only from the point of view of interne training, but also as regards basic registration. We are anxious, therefore, to be notified of any action taken by your Executive Board."

On July 14, 1938, I wrote Gov. Ex. 205, as no reply was received to Gov. Ex. 211, stating:

"In view of the fact that we have received no reply to our letter of May 5 and no notification of any action taken with respect to employment of physicians expelled from the County Medical Society, we wish to inform you that we are recommending to the Council that Mt. Sinai Hospital be removed from the approved interne list and also from the register of the American Medical Association."

Following a telephone conversation with Dr. Thompson, I wrote him on July 20, Gov. Ex. 212, stating:

"With reference to your recent telephone inquiry, we wish to state that in our opinion the action taken by the County Medical Society in expelling physicians for unethical practice constitutes a censure of other doctors participating in the same enterprise."

Dr. Thompson replied on July 21, 1938, Gov. Ex. 213, stating:

"This will inform you that on recommendation of the Executive Committee of the Staff of Mt. Sinai Hospital and ratification by the Board of Directors of the Mt. Sinai Hospital, Doctors A. L. Curtin and H. F. Walters were removed from the active staff of Mt. Sinai Hospital and courtesy privileges were withdrawn from these two men in accord with your letter dated July 20th and the telephone conversation had with you on Friday, July 15, 1938."

The last letter received in the matter, dated July 21, was received by the Council, July 22, 1938, and is Gov. Ex. 214:

"To supplement our letter of July 21 and to conform with your letter of July 20 we wish to inform you that Dr. G. H. Oberembt has been removed from the courtesy staff of Mt. Sinai Hospital and courtesy privileges withdrawn."

The other hospitals in Milwaukee dropped the expelled doctors from their staffs and I knew this because we received from each hospital a list of their staff by way of information sent us for maintenance of our register, and in looking over the list found that the names of these men no longer appeared. Those names were not dropped from the staffs in the hospitals in Milwaukee in pursuance of anything which my Council had done. So far as my information is concerned, it was the voluntary act of the hospitals

themselves in Milwaukee; Mt. Sinai was the only hospital in Milwaukee which retained the five expelled doctors on its staff.

I had no personal knowledge concerning the charges upon which the doctors had been disciplined in their medical society and that had nothing whatsoever to do with the Judicial Council or with the Mundt Resolution. I have no authority alone to act with reference to registrations on the hospital register, and that authority lies with the Council, and, before any action could be taken with reference to Mt. Sinai Hospital, the Council would have to adopt a resolution. The Mundt Resolution was not drawn to the attention of the other hospitals in Washington, D. C., which were not examined in 1937. Sometime prior to December 1, 1936, there had been an examination of the General Hospital of Rochester, New York. On December 1, 1936, the usual thing occurred and a letter was written the Rochester Hospital, Gov. Ex. 246, expressing "the attitude of the Council toward the Mundt Resolution," stating, "We wrote you on September 8 calling your attention to a recent resolution passed by the House of Delegates of the AMA." (Then follows the text of the Mundt Resolution.) "We are anxious to learn from approved hospitals as to whether they are in general agreement with the principle laid down in the Resolution and would be pleased to have your comments in the matter."

In reply Dr. Parnall of Rochester wrote (Gov. Ex. 254) on December 17, 1936, stating, referring to the Mundt Resolution, that he was in a quandary as to what to say as he personally felt members of hospital staffs should be members of their local societies, but he did not believe in any inflexible rule. He further wrote that he "suggested to our Board of Directors a change in the by-laws * * * requiring * * * unless otherwise voted * * * no physician would be eligible unless he is a member in good standing of the County Medical Society. When this proposal was referred to the Medical Board for an opinion I was rather surprised to find that its members, all members of the County Medical Society, were unanimously against it. Their feeling was that the County Medical Society should stand on its own merits and that it should offer enough of itself so that practically every member of a hospital staff should seek membership and that anything that savored of compulsion would subject medicine to the

same thing that arouses the resentment of doctors to the actions and attitudes of non-medical organizations." It was pointed out that only a small percentage of the staff were not members of the county society and that most of this group were younger men most of whom will shortly join the medical society.

Dr. Parnall then wrote that ten members or eight per cent of the staff were not members of the county society and stated:

"Even of the honorary inactive staff of 7 members, all but one being over 75 years of age, there is only one who is not a member of the County Society. The only two who are not members of the County Society are the Professor of Bacteriology at the University and a bacteriologist who is not an M. D. Our staff represents practically one-fourth of the active membership in the County Society. In this membership are the president of the New York State Medical Society, the president, the president-elect, and the secretary of the Medical Society of the County of Monroe. I personally have been a member of the American Medical Association continuously for over thirty years and two of my sons are members of County Societies. Under the circumstances, as far as control of organized medicine is concerned, could the House of Delegates very well hold that the Rochester General is an unfit place for the training of internes?"

When I and the Council were advised that there were ten members upon the staff of the General Hospital of Rochester who were not members of the local medical society, no action at all was taken to compel the hospital to adopt the Mundt Resolution. Neither the Council nor I have ever taken any compulsory proceedings against any hospital in the United States on the Mundt Resolution.

The correspondence with the Rochester Hospital was closed by a letter (Gov. Ex. 255) from my office dated December 21, 1936, stating:

"In response to your letter of December 17 let me express my appreciation of your information and your comments on the affiliation of your staff members with your medical society.

"The intention behind the resolution was to smoke out from the staffs of some hospitals certain men who were

regarded as objectionable and whom the hospitals felt a delicacy in removing. I notice that your staff enjoys a very favorable position in regard to the support of your professional organization, and that apparently any object which the Council might have had in view has already been anticipated."

No action was ever taken by the Council with reference to the Rochester General Hospital because of the fact that it had non-members on its staff.

Cross-examination.

By Mr. Lewin:

I am employed on a full-time basis with the AMA and have been since December 1, 1931, and am compensated by "a salary paid monthly." At one time I was engaged in contract practice. From 1906 to 1910 I was employed to look after the employees of the Copper Queen Consolidated Mining Company and was compensated "partly by salary and partly by fees from private practice."

Q. But you were actually rendering medical service to employees and being paid for it by salary?

A. Yes, sir.

Q. Did you regard that connection or salary as unethical practice on your part?

A. No, sir.

Q. Was it ever challenged as being unethical?

A. No, sir.

Q Did you have any other contract to practice during your career except that?

A. No, sir.

Q. Were you ever a physician for a railroad?

A. I was a physician for a railroad for about one year.

Q. Which railroad?

A. New York Central.

Q. What was your arrangement with the New York Central?

A. I had no compensation except an annual pass.

Q. Was the taking of that emolument for your service regarded as unethical practice?

A. No, sir.

Q. Was it ever challenged on that ground?

A. No, sir.

Q. When you worked for the mining company on a salary and rendered medical service to the employees, would it be fair to characterize that as selling your professional service for resale to those employees?

A. Well, I don't know whether it would be applicable or not.

Q. You remember that characterization that your colleague, Dr. Woodward, put upon Group Health Association doctors, do you not?

A. I can recall it now.

Q. As a matter of fact, might not your employment with that mining company be so characterized?

A. I am not sure whether it could or not. The employees paid a certain fee which the company collected and paid us out of that. Whether they acted as a resale agent or not I could not tell you.

Q. So your thought would be that that sale of medical services for resale is not unethical; is that right?

A. I would agree that all forms of contract practice are not necessarily unethical.

Q. Would you say that the approval which the AMA gives hospitals for the teaching of residents is a valuable thing to the hospital who gets such approval?

A. Yes.

Q. Would you say it was extremely valuable to the hospital?

A. No.

Q. Would you say that the approval of the AMA for interne training was valuable to the hospital?

A. Yes.

Q. Would you say that was extremely valuable?

A. No.

Q. Not extremely valuable?

A. No.

Q. Would you say that registration of hospitals was valuable to the hospitals?

A. Yes.

Q. In what way is registration valuable to a hospital?

A. It simply means that people who want to get information about a hospital can get it by turning to our register.

Q. People are more likely to go to a registered hospital than to an unregistered one?

A. Probably.

Q. And therefore the hospital is likely to enjoy more business?

A. Yes.

Q. And get more income from the patients who take its service?

A. Probably.

Q. What is the value of the approval of a hospital for interneship?

A. It is this, that if the hospital is known to render a good course of instruction to its internes by reason of its being on our list, it is easy to get internes. Good internes will apply; and they will accept interneship in those hospitals without any compensation other than their maintenance. If they are not getting good instruction they would have to be paid in cash.

Q. Any hospital has a substantial financial interest in getting approval for interne training from you and your council?

A. Well, it is a financial interest but not a very big one.

Q. Well, it would mean without your approval it would have to employ house doctors on salary, wouldn't it?

A. Yes.

Q. But with your approval it is able to attract bright medical students to work for very little?

A. Quite so.

Q. And in return these internes would perform a valuable service to the hospital, would they not?

A. Yes.

Q. Now, does the hospital get anything by way of prestige in obtaining approval for internes from you?

A. Well, that is a rather indefinite quality. It doesn't do them any harm.

Q. No. And conversely, a hospital which loses your approval suffers substantially in prestige, deosn't it, wouldn't you say?

A. Not necessarily. There are too many good hospitals that don't have our approval to make that true.

Q. Yes, but if a hospital once has your approval and then you withdraw it, doesn't that bring about a loss of prestige?

A. Not necessarily.

Q. But wouldn't it give that hospital something of a black eye?

A. No. May I illustrate that?

Q. Yes.

A. The hospitals of the United States Army have frequently been approved for the training of internes. Sometimes when they haven't appropriations for internes we have to withdraw our approval simply because they are not hiring internes, and that doesn't affect their prestige in any way, shape or manner.

Q. It depends on the grounds for which the approval is withdrawn?

A. Yes.

Q. But if the approval is withdrawn because the American Medical Association chooses to characterize some of the members of the hospital staffs as unethical, you would say that would give it a black eye, would it not?

A. No, I wouldn't say so.

Q. You wouldn't?

A. No, sir.

Q. Well, on what do you think the withdrawal of approval would affect the prestige of the hospital?

A. Well, if the hospital was not giving good service to its patients then it would affect the prestige of that institution, the withdrawal of the approval of the American Medical Association and its council, for if that has any validity at all, it is based on the confidence of the public, and that confidence is built on the fact that it is based on the public interest.

Q. Well, don't you think the public might stop with the word "unethical", and not look behind it to see what you gentlemen meant by that term, and suppose there is some moral wrong?

A. Well, the reasons for withdrawal are not published, so the public wouldn't have any knowledge of that.

Q. The medical profession would have knowledge, wouldn't it?

A. No, sir.

Q. Wouldn't you say Mt. Sinai Hospital would have received a loss of prestige because they had these doctors who were expelled from the Milwaukee County Medical Society?

A. Well, I don't think it would have.

Q. You don't think it would have suffered any loss of prestige?

A. No, sir.

Q. Didn't you have an article in the American Medical Association Journal entitled "Hospital Service in the United States", published March 11th, 1939?

A. Yes, sir.

Q. And in that article didn't you say "It is considered a disgrace among hospitals to be refused registration, and institutions that are rejected are frequently aroused". Did you say that?

A. I don't remember saying it, but if it is in that article——

Q. Is it true? Is it true that loss of registration might well be regarded as a disgrace for the hospital?

A. That is a refusal of registration.

Q. All right. Would the same thing apply to withdrawal?

A. Well, it would depend upon the grounds upon which the withdrawal was based.

Q. Suppose the grounds are not known. You see, the public doesn't usually know the grounds. Might it not assume there was really some valid moral grounds for withdrawing this approval?

A. Well, I think that the public would probably assume that there was some reason.

Q. As a matter of fact don't you know, Dr. Cutter, that most of the hospitals desire your registration and your approval for interne training and for residencies very much indeed?

A. I think that is true.

Q. Do you remember the letter you got from Sister Rodriguez here in Washington saying that withdrawal of the approval for interne training school would be a dire catastrophe?

A. I think she over-stated the case.

Q. Well, you have, in general, in the minds of hospital superintendents, that thought, don't you?

A. Well, I don't think it is as strong as that.

Q. By reason of your power—and I am speaking now of the power of your Council to withdraw this registration, these approvals, you are able to get the hospitals to do certain things, are you not?

A. Well, as long as the things we ask them to do are reasonable.

Q. For instance, you were able, were you not, to get the Mt. Sinai Hospital to deny courtesy staff privileges to a group of doctors. Is that right?

A. That is what they did.

Q. And you got that easily by invoking the Mundt Resolution, did you not?

A. No, not by the Mundt Resolution.

Q. Didn't your first letter to Mt. Sinai Hospital approach the problem on that basis?

A. The first letter did. The first letter did. But the final letter which told them they would be recommended for withdrawal was based on the essentials for a registered hospital.

Q. Isn't it true that your Council had a meeting on February 13, 1937, at which you were present, and at which this Mt. Sinai approval was discussed, and isn't it true that at that meeting the following occurred? (Gov. Ex. 638):

"Members of the staff expelled from Medical Society of Milwaukee County on charge of running an unethical clinic. Order expelling appellants from membership confined by the Wisconsin State Medical Society.

"If an appeal has been made to the Judicial Council, it was recommended that action regarding the removal of Mt. Sinai Hospital from the list of hospitals approved for intern training be withheld pending decision by Judicial Council.

"If no appeal has been made, the Secretary was instructed to write the hospital advising approval would be withdrawn unless they conform to the requirement regarding staff membership."

Is that what transpired?

A. It is.

Q. And didn't you have in mind the requirements of the Mundt Resolution?

A. No, we had in mind the requirements for registered hospitals.

Q. Well, this is approval for interne training, is it?

A. Approval for interne training is automatically removed if a hospital is off the register.

Q. But didn't the Mundt Resolution lay down as an approval for interne training that very thing?

A. No, it did not. It stated it should take in under advisement.

Q. And didn't you so construe that?

A. We construed it meant we should encourage hospitals to follow that spirit of the resolution.

Q. And you did embark on a practice of trying to get the hospitals to conform to that resolution?

A. We embarked on a practice of sending that to the hospitals for their approval.

Q. And if they didn't answer it you followed it up and still demanded to know what they were going to do about it?

A. We followed it up and asked them what they were going to do about it.

Q. And when they denied it, you followed it up with withdrawal of approval, didn't you?

A. No, sir.

Q. That is what you did in the Milwaukee case, wasn't it?

A. There was a different factor involved there.

Q. You followed the proceedings of the local Council in that Curtin case, didn't you?

A. I didn't follow the proceedings of the local Council at all.

Q. Wasn't this your letter of April, 1938, to Mt. Sinai Hospital (Gov. Ex. 207):

"We have been informed as to the action of the Milwaukee Society in the matter of certain physicians recently expelled from Society membership.

"Accordingly we shall be anxious to know what action Mt. Sinai Hospital is taking in respect to the resolution of the House of Delegates pertaining to staff appointments for hospitals approved for interne training."

Is that your letter?

A. Yes, sir.

Q. Did you mean the Mundt Resolution in that second paragraph?

A. That referred to the resolution, but the action wasn't taken on that basis.

Q. The action was taken two months later, wasn't it, and was to withdraw the approval for interne training?

A. Yes, sir.

Q. Didn't you know this, didn't you know that those Mt. Sinai doctors had been expelled solely because they were associated with this Milwaukee Medical Center?

A. I knew it was some such reason as that.

Q. Well, now, you must have followed the proceedings. Haven't you?

A. No.

Q. Haven't you seen this appeal to the Judicial Council on the grounds on which those doctors have been expelled?

A. No, I never saw that.

Q. In other words, it didn't make any difference to you on what grounds?

A. It didn't make any difference to me if the Judicial Council affirmed the decision. That is all we were interested in.

Q. No matter what grounds were used or what findings, if the AMA expelled them, then it was your duty to smoke them out of the hospitals?

A. We weren't in position to make investigations and we had to accept the decisions of our own Judicial Council as true.

Q. Isn't my statement true, no matter what the grounds were, once they were expelled by the local Societies and that had been affirmed on appeal or no appeal had been taken, then it was your practice to invoke the Mundt Resolution and smoke them out of the hospital staffs?

A. It was our practice to invoke the essentials of a registered hospital, to inform the hospitals that they wouldn't be registered if those men continued on the staff.

Q. Didn't you tell Dr. Parnall the purpose of the Mundt Resolution was to smoke out from the staffs certain men who were objectionable?

A. That letter went out from my office, but I didn't write it.

Q. Aren't those your initials?

A. Those are my initials, but a good many letters were written there that I didn't see.

Q. Don't you understand by that letter that that was the purpose?

A. Well, yes.

Q. Your Council stated it was the purpose?

A. No.

Q. You repudiate the statements then, do you?

A. Yes. As the principle of the Council, I would.

Q. Who was it that wrote that letter, do you know?

A. Well, I can't say.

Q. But you were certainly given responsibility for it. Do you permit them to put your initials on it when you don't dictate the letter?

A. We did that regularly.

Q. Somebody was authorized to write that letter, weren't they?

A. Somebody wrote it.

Q. Did you ever countermand that statement?

A. No, sir.

Q. Did you ever write to Dr. Parnall and say you were wrong in that second paragraph?

A. No, because I had no knowledge of the letter.

Q. This copy was retained in your files, wasn't it?

A. Yes, sir.

Q. Let me show you Exhibit 207 and call your attention to the dictation initials.

You see on the bottom of that "W. D. C.", which are your initials, are they not?

A. Yes.

Q. "K. H." are the initials of the stenographer. And "F. H. A." below that, those are the initials of the writer, are they not? And wasn't it the custom in your office for the writer to put his initials on below yours?

A. No, it wasn't the custom. One or two of the girls did it that way.

Q. There is another one with "C. M. P." below yours. I am referring to 217.

A. Yes, sir.

Q. But on this one that was sent to Dr. Parnall which is written in the first person, no such designation appears.

A. Well, it still remains true that I didn't dictate that letter.

Q. You signed it, though, didn't you?

A. I am not sure of that. I may have.

Q. And if you signed it, no doubt you read it over?

A. Well, not always.

Q. Well, as a matter of fact you did employ the Mundt Resolution in the Mt. Sinai Hospital instance to smoke out Dr. Curtin and these other doctors who had been expelled from the Milwaukee Society because they were connected with a prepayment clinic, and only because of that, off of the courtesy staff of the Mt. Sinai Hospital. Is that right?

A. No, sir. We relied upon the essentials of the registered hospitals when we recommended the action on that case.

Q. And doesn't this correspondence with Mt. Sinai Hospital show very clearly that you succeeded finally after that long correspondence in getting them to let Dr. Curtin and Dr. Ruth and these other doctors go?

A. Well, it shows they did let them go.

Q. And don't you think you had something to do with it?

A. Possibly.

Q. And don't you think you were carrying out the Mundt Resolution when you did it?

A. I don't think we were basing it on the Mundt Resolution.

Q. Now, was there any other agency that rated hospitals for intern training?

A. Not for intern training, no, sir.

Q. The AMA is the sole agency that does that in this country?

A. Yes.

Q. Now, isn't it true that you gave instructions to Dr. Peterson to inspect the five Washington hospitals after you received the letter from Major General Ireland calling attention to the H. O. L. C. medical service plan?

A. No, sir.

Q. When did you first give Dr. Peterson his instructions?

A. I didn't give Dr. Peterson any instructions at all. I simply filed with him the applications we had received.

Q. Doesn't Dr. Peterson work subject to your general directions?

A. Subject to my general directions he does, but he had practical control with respect to intern training in hospitals, and residencies.

Q. Isn't it true that you wrote him to inspect these five hospitals after you got a letter from General Ireland?

A. No.

Q. Didn't you testify that you first embarked on this program June 11th, 1937?

A. No.

Q. When did you first embark on this program?

A. I think the first was February 10th concerning these cases in which approval was wanted.

Q. When did he first come to Washington that year to inspect these four hospitals.

A. The 11th of June, 1937.

Q. And that was a few months after you received the Ireland letter?

A. It was.

Q. And although the Ireland letter did not call specific attention to name Group Health Association, there was no doubt what the gentlemen meant, from reading it?

A. Well, his letter was so brief and vague it didn't make clear what he was talking about.

Q. Is this vague (Gov. Ex. 295):

"The early part of the week a couple of men from the Home Owners' Loan Corporation visited the Surgeon General of the Army to say that they wanted to obtain the services of a doctor to look out for the health of their personnel, which incidentally is quite large. After the consultation, the Surgeon General asked Colonel Glenn Jones, a retired medical officer, to visit these people. After this visit which lasted for a period of two or three hours, Jones telephoned to the Surgeon General to the effect that this was nothing but an entering wedge to the establishment of state medicine and so far as he could make out the Twentieth Century Finance Corporation of New York City was going to pay the expenses of this so-called medical care for the personnel of the HOLC. Needless to say, Jones and the Surgeon General are dropping it like a hot cake."

Now, you had all that information when Peterson came to Washington to inspect these five hospitals?

A. Yes.

Q. And you thought enough of it to send copies of it to your colleague Dr. Woodward who was head of one Bureau and Dr. Leland who was the head of another Bureau?

A. Yes.

Q. And you read the letter and knew the facts contained therein?

A. Yes, sir.

Q. And isn't it true also that Peterson reported with regard to these five hospitals that these hospitals had on their staffs members who were not members of the AMA?

A. That is true.

Q. And so far as his report is concerned, it had been their practice to have doctors on their staffs who were not members of the District Medical Society, the local Society, of the AMA?

A. Yes.

Q. And you had read the reports and noted that fact because it was on that fact you called the attention of those hospitals to the Mundt Resolution. Isn't that so?

A. Well, those letters calling attention to the Mundt Resolution were letters that were written in a routine manner by Dr. Peterson, and he always tacked on that reference to the Mundt Resolution.

Q. You always called attention to the Mundt Resolution when you found as a matter of fact that a hospital was not complying with the policy of the Mundt Resolution?

A. Yes, sir.

Q. And your purpose of tacking it on was to call the hospital's attention to it, wasn't it?

A. Certainly.

Q. In the hope you could get the hospital to comply with the Mundt Resolution?

A. To whatever extent it might be practicable.

Q. And if it didn't comply then it would mean—it would deny courtesy staff privileges to any doctor, no matter how good a doctor he was, unless he joined up with your Society. Isn't that right?

A. No, sir.

Q. Why isn't it right?

A. Because the resolution does not anywhere state that every single member on the staff should be a member of the Society.

Q. Well, doesn't it say that it is the opinion of the House of Delegates that physicians, plural, on the staffs of hospitals approved for intern training by the Council of Medical Education in Hospitals should be limited to members in good standing of their local county Medical Societies? It says that, doesn't it?

A. Yes, but it goes on and says something else.

Q. And that House of Delegates likewise requests the Council of Medical Education to take this under advisement?

A. Yes.

Q. Well, it was the policy then?

A. It was merely a statement of opinion.

Q. All right. It was a statement of opinion then, if you want to call it that, that the entire staff, the active staff and the courtesy staff of all these hospitals should be limited to members of your Society. Isn't that right?

A. That is what the opinion of the House of Delegates was.

Q. And when you tried to get compliance with that opinion, it meant you were trying to get the hospitals to limit their entire staffs to members of your Society, and to kick off of those staffs perfectly good, sound, ethical, upstanding, skillful, doctors who didn't want to join your Society.

Isn't that right?

A. No, sir.

Q. And as a matter of fact isn't it true that as a result of your letters to those five hospitals in the summer of 1937

you did get those five hospitals substantially to promise you compliance with that restriction?

A. No, sir.

Q. All right. Let us see if you didn't.

Q. Dr. Cutter, I have had the opportunity of looking at the record of yesterday's proceedings, and I find that in response to questions from Mr. Leahy you testified as follows concerning the action which you or your council took with regard to the other hospitals in Milwaukee after you learned that those doctors headed by Dr. Curtin had been expelled from the local AMA society in Milwaukee because of their connection with a prepayment clinic. • • •

With regard to those doctors you were asked:

"Were those names dropped from the staffs of the other hospitals in Milwaukee in pursuance of anything which your council had done?

And you answered:

"Answer. No, sir."

Did you mean by that to say that you did nothing with regard to those other hospitals calculated to bring about their being dropped by those other hospitals?

The defendants interposed their objection to this line of questioning on the ground that it was improper because there was no evidence in the case that the clinic in Milwaukee was a pre-payment clinic. This objection was overruled and exception noted.

A. No, sir.

Q. That is your testimony?

A. Yes.

Q. And you were asked:

"Question. So far as your information is concerned, it was the voluntary act of the hospitals themselves in Milwaukee?"

And your answer:

"Answer. So far as we knew."

Did you mean by that to testify that you knew of nothing which you did which might have influenced the governing bodies of those other hospitals in dropping those expelled doctors?

A. Yes.

Q. And you were asked:

"What was the only hospital in Milwaukee which retained the five expelled members on its staff?"

And you answered:

"Mt. Sinai."

And:

"Did you yourself have any personal knowledge with reference to the charges or anything of that sort upon which the doctors had been disciplined in their own medical society?"

And you answered:

"Answer. No, sir."

Did you mean by that answer to say that you did not have access to the proceedings of the Judicial Council: Didn't you have the records of the Judicial Council before you?

A. I could have if I sought it, but I had no occasion for doing it and I did not seek it.

Q. As a matter of fact, wasn't the opinion of the Judicial Council immediately transmitted to you?

A. It was merely a memorandum stating that the Judicial Council had upheld the action of the local society and the state society, but the reasons for that were not given.

Q. Didn't that memorandum in your office contain the opinion of the Judicial Council?

A. No, only that paragraph that stated the action taken on these doctors who had been expelled was approved.

Q. Didn't you know that these doctors had been expelled and their expulsion confirmed on the ground that they were connected with a prepayment clinic in Milwaukee?

A. I knew they were expelled from their society through participation in an organization deemed to be engaged in unethical practice; what the basis of its operation was I did not know.

Q. And as a matter of fact, Doctor, I believe you testified that it would not influence your action in regard to Mt. Sinai, whatever the case had been for the expulsion of doctors, is that correct?

A. That is correct.

Q. If they had been expelled merely because they were connected with a prepayment clinic you would nevertheless have done what you did with reference to Mt. Sinai?

A. We could not go behind the findings of the Judicial Council.

Q. Now, let us see if I understand you. If the doctors who were expelled were perfectly skillful, able, professional men, that would not have influenced you with reference to your action at Mt. Sinai?

A. I can only repeat: We could not go behind the decision of the Judicial Council.

Q. Did you know anything against these men in their professional standing in the community in which they practiced?

A. I was aware of the fact that they had been expelled from their local organization.

Q. You knew nothing about their skill or professional ability?

A. No, sir.

Q. Nothing about their morals?

A. No, sir.

Q. Knew nothing about their professional relations with their patients?

A. No, sir.

Q. So far as you knew they were perfectly able, fine doctors, as good as yourself?

A. No, sir.

Q. Then you were asked this by Mr. Leahy:

"Did that have anything whatsoever to do,"—speaking of your action with the hospitals—"the action on your part or on the part of the Judicial Council, with the Mundt Resolution?"

And you answered:

"Answer. No, sir."

Q. Now, did you mean by that that the action which you took with reference to Mt. Sinai was not based on the Mundt Resolution?

A. Precisely.

Q. Did you have any other authorization from the House of Delegates to tamper with the staffs of hospitals except the Mundt Resolution?

A. Yes.

Q. What was that authority?

A. The one authorizing the registry of hospitals, which was approved by the House of Delegates and which stated the staff of any hospital that was registered should be controlled by ethical physicians.

Q. And you took that to mean that the staffs of hospitals must be limited to those people that the American Medical Association calls ethical?

A. We took it to mean that it should be limited to those against whom there were no charges of unethical practice.

Q. And by "unethical practice" you took it to mean any charges the American Medical Association might bring and your Judicial Council might approve against any doctor?

A. Yes.

Q. And it was on that authority and under the Mundt Resolution that you proceeded against Mt. Sinai?

A. Yes.

Mr. Leahy: We object. He has just denied that the Mundt Resolution was the basis for the action, and now Mr. Lewin has incorporated and added the Mundt Resolution to this other. He said he invoked the registered hospitals regulations which had been adopted by the House of Delegates. Now you ask him if it wasn't on the basis of that and the Mundt Resolution.

The Court: He said one of the letters had been based on the Mundt Resolution.

Objection overruled and exception noted.

Q. But at any rate, acting for the American Medical Association, you did try to induce the Mt. Sinai Hospital to kick these doctors off its staff, didn't you?

A. I wouldn't say that. If you will read the letter of Dr. Arestad dated May 5, introduced in evidence yesterday, I think you will get a very clear statement of the Council's disposition.

Q. Didn't you take the same kind of action that you took toward Mt. Sinai with the other hospitals in Milwaukee?

A. No, sir.

Q. Now, I ask you, did you know Mr. Theodore Wiprud?

A. I knew who he was.

Q. Isn't he the executive secretary of the District Medical Society?

A. Yes.

Q. Before that wasn't he the executive secretary of the Milwaukee society?

A. Yes.

Q. Didn't you have authority to write to Mr. Wiprud in regard to these doctors being on the staff of these hospitals in Milwaukee?

A. Yes; I think such a letter was sent.

Q. Didn't you write (Gov. Ex. 619 dated July 2, 1936):

"I should like to inquire (1) what are the names of the physicians who were recently expelled from your county Medical Society because of their connection with an organization fostering unethical practice, (2) have they made any appeal to the County Medical Society, (3) when was the action taken against them and how much time do they have in which they may make an appeal, (4) are they all, or any of them, and which ones, engaged in active service on the staff of either of the Milwaukee County hospitals.

"I would like details in this connection."

A. I think that letter was sent from my office.

Q. Didn't you want that information from Mr. Wiprud so you could approach the other Milwaukee hospitals in the same way as you had approached Mt. Sinai?

A. We wanted the information and got it, but we didn't approach the other hospitals.

Q. Didn't you seek that information so that you would be in a position to approach the other hospitals if they had retained these physicians on their staff?

A. We might have.

Q. And if you had used it that way you would be using it to kick those doctors off those staffs, would you not?

A. That is not a fair statement.

Q. You would have used it to induce those hospitals who were free, independent, private hospitals, free agencies, to take those doctors off their staff list under an implied threat that if they didn't you would withdraw their registration approval?

A. We stated in the letter to which I just referred that we did not pretend to tell any hospital, but if they voluntarily asked for the Council's approval they should be willing to follow the recommendation of the Council.

Q. But, as a matter of fact, didn't you want to interfere with them and bring about the situation in Milwaukee where those doctors, for some reason which you say you do not

know could not go into any of the private hospitals in Milwaukee?

A. We didn't wish to bring about such a situation as that.

Q. Didn't you want to bring about a situation where none of those doctors so expelled could go into any one of the registered hospitals in Milwaukee to practice their profession?

A. No, sir.

Q. Didn't you want to induce those hospitals, if they had retained them on their staffs up to that time, to expel them from their staffs?

A. No, sir.

Q. Why did you want this information you asked of Wiprud, then?

A. Because we wanted to know whether we should grant approval to those hospitals.

Q. In other words, you were prepared to withdraw approval of any hospital which continued with these doctors?

A. Yes.

Q. But if they got rid of them you would continue your approval of such institutions?

A. Yes.

Q. Do you call that smoking out doctors from the staffs of those hospitals or not?

A. No.

Q. Is this not the answer you got from Mr. Wiprud: I show you a photostatic copy of a letter dated July 3, 1936, and ask you if this is not his reply (handing Gov. Ex. 620 to witness). This is in response to your letter?

A. I think so.

Q. Does that contain the information which you sought?

A. Yes.

Mr. Lewin (Reading):

"DEAR DR. CUTTER:

I am pleased to reply to your letter of July the second, inquiring about the physicians recently expelled from the Society.

(1) The doctors expelled for participating in what is known as the 'Milwaukee Medical Center' are:

A. L. Curtin
H. C. Dallwig
J. E. Rueth

G. A. Sullivan
H. F. Wolters.

"(2) They were expelled after several hearings before the Board of Directors of this Society. Their counsel made an appeal to the Council of the State Medical Society, which was heard last week.

"No action was taken because of the necessity of the individual members of the Council reading some 800 pages of testimony covering the hearings held here.

"(3) The action against these men was begun by this Society on February 15, 1936, at a special meeting of our Board of Directors. Charges were preferred against the first three men on March 20, 1936, and they were given until March 27th to file their answers, and were heard on March 30th. Action against Dr. G. A. Sullivan was begun on March 2nd, 1936, and charges against him were heard on April 25th, 1936. Action against Dr. H. F. Wolters was begun at the meeting of our Board of Directors on April 28, 1936; Charges were preferred against him on June 3rd, and he was heard on June 5th, 1936.

"(4) Some of the hospitals in Milwaukee County require that all physicians doing work in their institutions, regardless of whether they are staff members, must hold membership in the Medical Society. Others require that only members of their regular staffs be members of the Society.

"We understand that those physicians participating in the so-called Medical Center are at present working in St. Luke's, Mount Sinai, and Misericordia Hospitals. We have notified these hospitals that these doctors are no longer members of the Society. In the instance of Mount Sinai, we have been informed that if the American Medical Association takes the position that the hospital will not be recognized for intern training they will not allow these physicians to continue working there.

"We have been advised that St. Joseph's Hospital has notified these men that they can no longer work there after July 15th because they are not members of the Medical Society.

"May I suggest, Dr. Cutter, that you have a talk with Dr. Rock Sleyster relative to this situation? He is entirely familiar with it. He sat in on one of our Board meetings when these men were first talked to about their project, and he heard the appeal to the State Society, also.

"Naturally, our Board is anxious that your Council support its stand against these physicians because of their unethical conduct."

Q. Now, he wanted support for his stand and weren't you willing to give him support along those lines?

A. We stated to him what the policy of the Council would be.

Q. By the way, opposite the names of these doctors on that letter appear certain items in handwriting. You see after the name "Dr. Curtin" you have the name "Misericordia, Attending Surgical Staff, Mt. Sinai." That shows he was still on the staff of those hospitals in Milwaukee?

A. Yes.

Q. After Dr. Wolters you have "Attending Staff, Mt. Sinai"?

A. Yes.

Q. And then some of the other doctors' affiliations you have indicated?

A. Yes.

Q. Who wrote those notes: Were they done in your office?

A. I do not know.

Q. In other words, wouldn't it be the duty of your office to check to see which ones of these doctors were connected with the Milwaukee hospitals?

A. They may have done that.

Q. Wouldn't that be the natural thing? Wouldn't they have done that preparatory to your taking action in regard to the hospitals on whose staffs they appear?

A. They might have done so.

Q. Didn't you write to Wiprud on July 9, 1936 (Gov. Ex. 621), thanking him for the information and saying that the Council on Medical Education and Hospitals "will, without question, adhere to the instructions of the House of Delegates in requiring that hospitals approved for intern training have on the staff only physicians that are members of the county medical society"? Didn't you say that?

A. I don't remember.

Q. Isn't this a copy of the letter?

A. I think it is.

Q. And in the paragraph I have read weren't you talking about the Mundt Resolution and not about registration?

A. About both of them.

Q. Weren't you talking about intern training?

A. Yes.

Q. Wasn't the Mundt Resolution directed to that?

A. That approval for such training was contingent upon registration.

Q. You weren't invoking the Mundt Resolution up to this point, at any rate?

A. Both of them.

Q. Not alone this registration restriction?

A. That is right.

Q. Did you say this, also:

"My impression is that the Council's action regarding Milwaukee hospitals should be held in abeyance pending the outcome of the appeal of the expelled physicians mentioned in your letter"?

A. Yes.

Q. Were you talking about the other hospitals in addition to Mt. Sinai?

A. Any hospital.

Q. In other words you were preparing your guns for the other hospitals as well as Mt. Sinai?

A. That refers to any hospital that might be involved.

Q. Misericordia, St. Luke's, St. Joseph's, the Passavant and the rest of the hospitals, in addition to Mt. Sinai?

A. Provided they continued to keep on their staffs men who were found by the Council to be guilty of unethical practice.

Q. Did you write this letter of July 17, 1936, to Dr. Rock Sleyster (handing Gov. Ex. 622 to witness)?

A. I think so.

Q. Didn't you say in that letter:

"I am enclosing a copy of a letter which is being sent to St. Luke's, Mount Sinai, and Misericordia Hospitals, following receipt of your recent communication.

"We have used this same method with respect to quite a number of hospitals and the response has, in almost all instances, been completely satisfactory.

"We might add that in view of the monumental task associated with analyses of staffs, we have started by concentrating on the attending or voting staff, with the hope that when that situation is cleared up we can turn our attention to junior and courtesy groupings.

"Such results as we obtain through this and other methods will be communicated to you as promptly as possible."

Wasn't that Dr. Sleyster the gentleman whom Mr. Wiprud asked you to communicate with in regard to the Curtin case?

A. Yes.

Q. And hadn't he written you with regard to the status of the other Milwaukee hospitals?

A. I presume this refers to some of the others.

Q. On that basis?

A. Yes.

Q. And didn't you enclose this in your letter to Dr. Sleyster, which was the letter you said you were going to send to those other hospitals, as well as Mt. Sinai?

A. Yes.

Q. And didn't you send this letter to the other hospitals as well as Mt. Sinai?

A. I suppose so.

Q. Is this changing your testimony a little from what you gave yesterday?

A. Yes.

Q. This letter (Gov. Ex. 623 dated July 18, 1936), which is a form letter, reads: (reading)

"It has come to our attention, through correspondence with the Medical Society of Milwaukee County, that certain physicians have been expelled from that society through participation in an organization known as 'Milwaukee Medical Center.' It is also reported that certain of these same individuals continue as members of your attending staff with hospital privileges.

May we call your attention to the recent resolution passed by the House of Delegates of the American Medical Association, as follows:!"

Q. And then don't you quote the Mundt Resolution? And then don't you follow that up with:

"What possibility, if any, exists for observance of the principle laid down in this resolution?"

Did you say that?

A. Yes.

Q. Is it your testimony, then, that up to this point, with regard to these doctors, you were invoking the Mundt Resolution not only against Mt. Sinai but against the other hospitals in Milwaukee?

A. Yes.

Q. And you were going to do that because "this method had worked well in a great many other cases"?

A. Yes.

Q. And that by doing so you were thus able to get hospitals to kick off doctors from their staffs and confine themselves to those doctors whom your society, for any reason, chose or was willing to permit to remain as members of such staff?

A. Yes.

Q. To confine staffs to those whom the American Medical Society was willing should remain?

A. If the hospitals wished to have our approval.

Q. Here is a letter (Gov. Ex. 232) already in evidence to Mt. Sinai; it conforms to the letter I have just read?

A. Yes.

Q. And here is Dr. Thompson's reply, is it not; which was already in evidence (Gov. Ex. 233)?

A. Yes.

Q. Is this the letter (Gov. Ex. 637) you sent to St. Luke's Hospital?

A. Yes.

Q. And it conforms to that same form, doesn't it?

A. Yes.

Q. Wasn't your purpose in sending that to St. Luke's identical with your purpose in sending that first one to Mt. Sinai?

A. Yes.

Q. It was?

A. Yes.

Q. I will ask you whether that is not the same letter you sent to the Misericordia Hospital the same date (Gov. Ex. 636)?

A. Yes.

Q. Isn't it identical with the same letter to which I have referred?

A. Yes.

Q. And identical with the letter you had sent to Mt. Sinai?

A. Yes.

Q. And sent for the same purpose?

A. Yes.

Q. And didn't you cause a memorandum to be made of the staff affiliations of these doctors and of the staffs of all the various hospitals in Milwaukee at that time?

A. Yes.

Q. Is that the memorandum (Gov. Ex. 624) which I hand you, dated July 30, 1936?

A. Yes.

Q. Wasn't that done contemporaneous with this attack on these expelled doctors?

A. It was done contemporaneously with the preparation of those letters you have just read.

Q. And wasn't it done contemporaneously with your action toward denying these hospitals your approval?

A. Yes.

Q. And didn't it make a thorough job of all the large hospitals in Milwaukee and take up each one in turn?

A. It mentions eight hospitals.

Q. And they are Columbia, Evangelical Deaconess, the Passavant, Misericordia, Mount Sinai, St. Joseph's, St.

A. Yes.

Luke's, and St. Mary's Hospitals?

Q. So you were then checking on all those hospitals in connection with these expelled doctors?

A. Yes.

Q. Didn't you receive this letter back from the Misericordia Hospital which I now show you?

A. Yes.

Q. This is your letter (Gov. Ex. 625). You wrote again to Misericordia on October 26, did you not?

A. Yes.

Q. Didn't you say:

"This is in continuation of our previous correspondence about qualifications for staff membership in Misericordia Hospital. We have been informed that the Council of the Wisconsin State Medical Society has upheld the action of the Milwaukee County Medical Society in expelling certain physicians for unethical behavior.

How does this action affect Misericordia Hospital? Are all members on your staff in good standing with the Milwaukee County Medical Society or eligible for membership in that society?"

And then didn't you receive this reply (Gov. Ex. 626) from Misericordia Hospital, dated November 10, 1936?

A. Yes.

Q. Didn't the hospital write back on that date:

"DEAR DR. CUTTER:

In response to your request of October 26, we wish to apologize for this long delay. A special executive meeting was called to take up this matter.

We do have some staff members who have been expelled by the Milwaukee County Medical Society for what they deemed unethical behavior. We have been awaiting a final decision from the American Medical Association before taking final steps in requesting their resignation. We shall appreciate having the opinion of the A. M. A. on this matter."

And in response to that, didn't you send the Misericordia Hospital your opinion as to what that hospital should do?

A. Yes.

Q. Didn't you intend by this letter (Gov. Ex. 627) I have just shown you to put pressure on Misericordia Hospital to follow the policies of your council with regard to limiting its staff?

A. Yes.

Q. Didn't you say this (Gov. Ex. 627):

"We are taking this means to answer two letters recently received from Misericordia Hospital.

The first of your letters dated November 10 asks for an opinion from the American Medical Association regarding the affiliation of physicians charged with unethical behavior on the staffs of hospitals which it registers. Marked copies of the 'Essentials' for hospital registration and of the 'Code of Ethics' of the American Medical Association are incorporated for your convenience.

Our attention has also been called to your letter of October 29 which informs us of certain changes in your house staff program. On the basis of this information, we assume that you have decided to abandon intern training for the time being. We believe it best for all concerned, therefore, to omit mention of Misericordia Hospital in our published approved internship list in order that prospective interns may not be misled into believing that appointments are still available at Misericordia Hospital.

If this is not the proper interpretation placed on your recently submitted information, we feel sure that you will communicate with us further."

A. Yes.

Q. And didn't you immediately get this letter (Gov. Ex. 628) of December 5, 1936, from Misericordia:

"In reply to your letter of December 1, we wish to state that the necessary steps will be immediately taken to notify our staff physicians who are violating the 'Code of Ethics,' that we find it necessary to refuse their patients accommodation in our hospital."

Wasn't that the promise you sought?

A. That is what she said.

Q. Wasn't that what you were after, to get that sort of a promise from her?

A. I think so.

Q. Then after you got that, didn't you write back and tell her everything was jake——

Mr. Leahy: Read the rest of the letter.

Mr. Lewin: I will be glad to (Reading Gov. Ex. 628):

"May we state that our recent communication regarding internship was misinterpreted. We have no desire to discontinue offering internship service at Misericordia. In fact, we are better prepared now than ever before to offer a more complete interne service, since our daily average of patients has perceptibly increased. We have been thinking seriously of maintaining three internes.

The reason for having the Resident and two internes this year is due to the fact that we were too late in making our requests. The prospective internes had already received their appointments. The only available course left to us was to accept a resident and two internes. We hope that this arrangement meets with your approval, and that an internship at Misericordia may remain on your approved list.

We appreciate your kind advice in these matters, and will take every means to meet your requirements."

And after you got that didn't you write back in substance that everything was O. K. and that the hospital would be continued on the approved list?

A. Yes.

Q. This is your letter (Gov. Ex. 654) dated December 11, 1936?

A. Yes.

Q. Now, didn't I understand you to testify yesterday that your Council on Medical Education and Hospitals is responsible directly to the House of Delegates?

A. Yes.

Q. And that it doesn't work in close cooperation with the enforcement of the Judicial Council pronouncements?

A. Yes.

Q. Now let me read you, let me call your attention to an action of the House of Delegates in 1935 (Gov. Ex. 606). It is headed "Report on Judicial Council."

"Your committee notes that as a result of the discussions and pronouncements of the Judicial Council there has been a steady improvement in the methods by which medical service is made available to the public. It regrets, however, that much remains to be accomplished, and it believes that the time has arrived when we should insist on the strict enforcement of the Principles of Medical Ethics by all constituent societies for, as so well stated by the Council, the Principles of Medical Ethics is accepted as a guide in professional relations and intelligently and faithfully followed by a large majority of the profession. There are, however, some isolated instances in which this is not true. The delinquents comprise individuals, certain groups and a few institutions. Solicitation of patients, particularly in industrial practice, unfair competition by clinics, and groups, and unethical and unlawful practice of medicine by hospitals, dispensaries, insurances and universities furnish outstanding examples. (29-30) (41)

The Council further states, 'Public confidence in our avowed declarations for medical control over things medical cannot be successfully cultivated or maintained unless we exclude or remove from the ranks of our organized profession those who ignore our ethical code, especially as it applies to the true professional spirit in our relations with each and every patient.' It will be recalled, the Council continues, that 'last year the House of Delegates amended its Principles of Medical Ethics so clearly that there can be no misunderstanding of the conditions mentioned but the present method of procedure of preferring charges makes the pronouncement ineffective.' Your committee, therefore, deems it advisable to extend the origination of charges, in certain situations manifestly too great for county societies to handle, to the state association and possibly in

rare instances to the national organization. Your committee agrees with the Judicial Council that, when the House of Delegates sees fit to extend such jurisdiction in matters of discipline, the Council should have the duties and powers then enjoined on it but should not at any time be expected to function in an ex parte capacity.

"The Judicial Council again reminds us that Medical ethics follow every member of the American Medical Association, whether in hospitals, in universities, in clinics or in private practice. While the member is at all times subject to the ethics of the profession, the hospital, university or clinic, as an entity, is not. Through the Council on Medical Education and Hospital in cooperation with the Judicial Council, sufficient oversight, persuasion and, if needed, pressure can be brought to accomplish that which the physicians in such institutions, as individuals, cannot. With such concerted action between the two Councils and with such enforcing legislation as has been suggested, many harmful and obnoxious practices would cease and others, not now presenting any large problem, would be prevented."

Your committee, therefore, recommends that the Council on Medical Education and Hospitals, "—that is your council, isn't it?

A. Yes.

Q. "Together with the Judicial Council" —That is the one which passes on expulsion proceedings, isn't it?

A. Yes.

Q. "Formulate a plan whereby all those"—That means the hospitals?

A. Yes.

Q. "Associated in the delivery of Medical service be included in the investigation of hospitals for classification and that approval be based in the future on the ethical practices of the institution as well as on its scientific work."

Now, you were aware of that resolution, were you not?

A. Yes.

Q. And didn't you take action in connection with it? Were you familiar with this report of the Judicial Council made to the House of Delegates in 1937 in connection with that resolution asking for cooperation between your council and the Judicial Council (Gov. Ex. 608)?

"The 1935 House of Delegates recommended that the 'Council on Medical Education and Hospitals, together

with the Judicial Council, formulate a plan whereby all those associated in the delivery of medical service be included in the investigation of hospitals for classification and that approval be based in the future on the ethical practices in the institution as well as on its scientific work.' Consequently the Judicial Council met with the Council on Medical Education and Hospitals in February this year and after thorough discussion presented the basis of a plan for the desired cooperation of the two councils. The problem, which involves many difficulties, will require some time for its solution."

Do you remember that report?

A. Yes.

Q. Is it true?

A. Yes.

Q. Did you meet with the Judicial Council to formulate a plan of cooperation between the two, whereby you could force on the hospitals your so-called medical ethics?

A. That was the purpose of the resolution of the Judicial Council.

Q. And in that meeting didn't you work out a plan with the Judicial Council whereby you would enforce these registration requirements and the Mundt Resolution against hospitals which the Judicial Council had passed on and against doctors which the Judicial Council had expelled?

A. No, sir, we did not discuss that.

Q. You mean to say that this action which you took in connection with Mt. Sinai, in connection with all these other hospitals in Milwaukee was not done pursuant to the plan which had been worked out?

A. Absolutely had nothing to do with it.

Q. I think I can be a little more speedy about those things. I just want to call your attention to the fact that you approached the Passavant in the fall of 1936 in the same way as the others. Gov. Ex. 634 is the same as your other letters?

A. Yes.

Q. And then didn't you approach the State Medical Society of Wisconsin again in the fall of 1936 with reference to the doctors Curtin, Dallwig, Rueth, and Sullivan?

A. I think we did.

Q. Is that your letter (Gov. Ex. 629) to that society, dated October 14, 1936?

A. Yes.

Q. Aren't you still seeking information about their status so that you could enforce this restriction on the hospitals?

A. Yes, we were still seeking information.

Q. And for the purpose of enforcement against these hospitals?

A. Yes.

Q. This was to the secretary, State Medical Society of Wisconsin, Mr. J. G. Crownhart, dated October 14, 1936 (Reading Gov. Ex. 629):

"DEAR MR. CROWNHART:

We have understood from various parties in Milwaukee that the physicians who were expelled from the Milwaukee County Medical Society for participation in the Milwaukee Medical Center have made an appeal to the Council of the State Medical Society. The physicians referred to are:

A. L. Curtin,
H. C. Dallwig,
J. E. Rueth,
G. A. Sullivan,
H. F. Wolters.

Can you tell me whether the Council of the State Society has handed down any decision in this matter?

For your information I may say that the approval of certain hospitals for intern training is jeopardized because of the presence of some of these men on their staffs."

Q. What is your testimony now as to whether you were enforcing the Mundt Resolution against these hospitals?

A. I still say they would be jeopardized if taken off the register.

Q. And if you enforced the Mundt Resolution the effect would also be to jeopardize their position?

A. We never attempted to do that.

Q. Didn't Mr. Crownhart reply (Gov. Ex. 630 dated Oct. 16, 1936):

"I have your letter of October 14 as to the present status of the following-named physicians in Milwaukee:

A. L. Curtin,
H. C. Dallwig,
J. E. Rueth,

G. A. Sullivan,
H. F. Wolters.

These physicians were expelled from the Medical Society of Milwaukee County and on appeal to the Council of this Society, the attached decision sustaining the expulsion was handed down on September 8. It has been my informal understanding that the physicians concerned would appeal to the Judiciary Council of the American Medical Association. Perhaps you had better check with Doctor West on this point to ascertain whether the appeal has been filed in fact."

You did get an enclosure telling you just what the charges were against these doctors?

A. I don't remember what was in the enclosure.

Q. Didn't he say he was enclosing the "attached decision"?

A. Yes.

Q. And whatever it was you got it?

A. Yes.

Q. Now, you told us that C. M. P. is Dr. Peterson?

A. Yes.

Q. And he was one of your inspectors?

A. Yes.

Q. Operating under your supervision?

A. Yes.

Q. And who is Mr. Sanger?

A. He is the director of the Hospital Division of the Council.

Q. And he operates also under your supervision?

A. Yes.

Q. Now, let me show you what purports to be a memorandum from Dr. Peterson to Mr. Sanger dated October 22, 1936, in this same matter. Is this the memorandum from Dr. Peterson to Mr. Sanger (Gov. Ex. 652)?

A. It may be.

Q. Wouldn't he be authorized to say that?

A. No.

Q. Dr. Cutter, just a few more questions about your correspondence. After receiving information from Dr. Crownhart of the State Society that they had upheld the action of the Milwaukee Society; after receiving a copy of that decision, you then wrote the rest of the Milwaukee hospitals again, didn't you?

A. I don't recall.

Q. Didn't you write, on October 27, 1936, to St. Joseph's Hospital, and isn't this your letter which I hand you (Gov. Ex. 631)?

A. Yes.

Q. That is your signature?

A. Yes.

Q. Did you say in that letter:

"We have recently been notified that certain physicians have been expelled from the Milwaukee County Medical Society for unethical practices and that the action of this constituency has been upheld by the Council of the State Medical Society of Wisconsin.

How does this action affect St. Joseph's Hospital? Are all members on your staff in good standing with the Milwaukee County medical society or eligible for membership in that society?

Very truly yours, William Dick Cutter."

And didn't you get this reply (Gov. Ex. 632)?

A. Yes.

Mr. Leahy: Will you show this to the Court, please?

The Court (after examining document): Do you object to it?

Mr. Leahy: Yes.

Mr. Lewin: He says he received it and acted on that information, and went after the other hospitals as a result.

The Court: If he did, it would be admissible.

Mr. Lewin: He threatened Mt. Sinai. What more do you want? That is why I kept after Mt. Sinai and got this information; he was going to do a thorough job.

The Court: You mean the letters you have already referred to show that?

Mr. Lewin: Yes.

The Court: Then I think it would be admissible. It cuts both ways.

The objection of the defendants of incompetency, immateriality, irrelevancy, hearsay, as no conspiracy proven and too remote, was overruled and exception noted.

Q. This reply which I think you received from St. Joseph's dated November 2, 1936, reads (Gov. Ex. 632):

"DEAR DOCTOR:

In reply to your letter of October 27th in regard to certain physicians who were expelled from the County Medical Society, I have only to say that they are no longer members of our staff but have also been barred from working in our hospital.

This is no great punishment to them as there are other hospitals in the city who welcome them with open arms."

After you got that letter didn't you continue with your correspondence with Mount Sinai, which has already been reviewed in evidence, and your correspondence with the other hospitals?

A. I may have continued with Mount Sinai, but I don't recall about the others.

Q. Here is a letter (Gov. Ex. 656) which antedates that letter, October 26, to St. Luke's; isn't that identical with your letter to St. Joseph's?

A. Yes.

Q. And isn't this your follow-up: When you received no reply, didn't you follow that up again to see whether they were permitting these doctors on their staff? Isn't this yours, November 12, 1936 (Gov. Ex. 633)?

A. That is right.

Q. Isn't that after you got this letter from St. Joseph's saying that some hospitals were letting them in?

A. Yes.

Q. Didn't you finally get assurance that your wishes were met in St. Luke's Hospital? I show you this letter dated November 14, 1936, (Gov. Ex. 640). Did you receive that?

A. Yes.

Q. And here is the correspondence you had with St. Luke's. I won't read this first letter, of October 26, because it is exactly like the one you sent to St. Joseph's, isn't it?

A. Yes.

Q. And here is your follow-up letter of November 12, 1936, to St. Luke's (Gov. Ex. 633):

"MY DEAR MISS JACOBSON:

On October 26 we wrote you regarding our mutual problem of physicians who have been expelled by your County Medical Society.

We have not heard from you, and trust you will send us your reply.

Very truly yours,"

And doesn't the reply (Gov. Ex. 640) say that they have no members of the hospital who are not members of the Milwaukee Medical Society?

A. Yes.

Q. Didn't you do the same thing with the Evangelical Deaconess Hospital? Didn't you write the same letter on October 27 to that hospital you wrote to St. Joseph's, and send them the letter (Gov. Ex. 655)?

A. Apparently.

Q. And didn't you do the same thing with Passavant Hospital, writing them substantially the same letter on October 28, 1936 (Gov. Ex. 634), the same day you wrote the others?

A. This is a little different letter.

Q. Is there any substantial difference? Shall I read it? This is to the Passavant Hospital (Gov. Ex. 634):

"October 27, 1936.

"Rev. Herman L. Fritschel, Supt., Milwaukee Hospital, 'The Passavant', Milwaukee, Wisconsin.

DEAR REVEREND FRITSCHEL:

We have recently been notified that certain physicians have been expelled from the Milwaukee County Medical Society for unethical practices and that the action of this constituency has been upheld by the Council of the State Medical Society of Wisconsin.

We have received no intimation that the expulsion of these men affects the staff roster at 'The Passavant' in any way. However, we are making inquiry of all approved hospitals in Milwaukee to learn if all members on your staff are now in good standing in the Milwaukee County Medical Society or eligible for membership therein.

Very truly yours,"

And I think you received a satisfactory response from the Passavant Hospital, did you not?

A. Yes.

Q. Is this it, dated November 3, 1936, from that hospital (Gov. Ex. 639)?

A. Yes.

Q. And didn't you receive from the Misericordia Hospital evidence that it was going to respect and was acting in response to your suggestion? I hand you what purports to be a memorandum from the superintendent of that hospital to the staff of Misericordia Hospital, dated May 11, 1937 (Gov. Ex. 635). Did you ever see that memorandum before?

A. No, I never saw it.

Q. Wasn't it in the files of your Council on Medical Education and Hospitals?

A. I couldn't say.

Q. All right. Didn't you gain knowledge that as a result of these activities which we have been exploring that you were supposed to get all of the Milwaukee hospitals that you listed on that earlier memorandum to comply with your wishes?

A. My recollection is that all the hospitals except Mount Sinai, by the early spring of 1938, had limited their staff membership to those who were members of the county society or eligible to become members.

Q. And you don't attribute that result in the slightest degree to your efforts?

A. I do not say that; I think it may have affected it.

Q. You think it may have affected it. Now, isn't it true that you regarded the Mundt Resolution, even though phrased as it was, as an edict of the House of Delegates?

A. No, sir.

Q. You didn't?

A. No, sir.

Q. Didn't you refer to it as an edict of the House of Delegates in your correspondence? I show you now what purports to be your letter of July 22, 1938, addressed to Dr. D. L. Sprinkle, Superintendent, Tampa Municipal Hospital, and ask you if this is your letter (Gov. Ex. 643)?

A. Well, this letter refers to an edict of the House of Delegates, but the use of that word is entirely unauthorized and unjustified.

Q. Did you write that letter?

A. No.

Q. That isn't your letter?

A. No.

Q. Doesn't it bear your dictation initials?

A. It was customary to put those initials on any letter I signed.

Q. Doesn't it bear your dictation initials?

A. Signature initials.

Q. Does it bear anybody else's initials indicating it was written or dictated by anyone else?

A. No.

Q. It bears the initials "W.D.C.:M.W.", the latter for the stenographer?

A. Yes.

Q. Did you read it over before you signed it?

A. I don't think I did.

Q. But at any rate you sent this out?

A. Yes; it was sent out from our office.

Q. Isn't this what it says here (Gov. Ex. 643):

"You realize that the Council on Medical Education and Hospitals is carrying out the edict of the House of Delegates of the American Medical Association, which is here reiterated."

And then don't you include in here the Mundt Resolution, quote it in full?

A. Yes, I did.

Q. Isn't this the situation: You were prepared to put this pressure on the hospitals in the form of suggestion, were you not? You simply quoted the Mundt Resolution, and asked what possibility, if any, there was for observance. That was your method?

A. The procedure adopted by the Council was to send copies of the Mundt Resolution as a matter of information, and ask the question as to what they proposed to do about it.

Q. And usually you got results in that way?

A. More or less.

Q. But you were prepared to use more drastic methods if necessary?

A. Not on the basis of that resolution.

Q. Let me show you a letter (Gov. Ex. 642) which purports to be from you to Dr. Knudson, President, King County Medical Society, Seattle, Washington, and ask you if this is a copy of your letter. I am referring particularly to this second paragraph, Dr. Cutter.

A. That letter was sent out from my office.

Q. You signed your name to it?

A. Yes, sir.

Q. Does it not carry this paragraph—March 28, 1936 (reading Gov. Ex. 642):

"This information regarding Medical Society memberships will be particularly useful to us at this time, because we are now contemplating a survey of the Seattle hospitals shortly after the American Medical Association convention in San Francisco. So far it has not been necessary to take drastic action against any hospital on the basis of the membership resolution of the House of Delegates, since prompt results have usually been obtained by less formidable action on the part of the Council."

Have I read that correctly?

A. Yes.

Q. Does that refer to the Mundt Resolution?

A. Yes, sir.

Q. Now, Doctor Cutter, just as we closed the session of yesterday I had asked you this question and you had given me this response (reading):

"Q. And, as a matter of fact, is it not true that as a result of your letters to those five hospitals"—meaning the five Washington hospitals—

"in the summer of 1937 you did get those five hospitals substantially to promise compliance with that restriction? And by 'that restriction' I mean the Mundt Resolution."

And your answer was "No, sir."

Do you still stand on that testimony?

A. Yes, sir.

Q. Now I will hand you a sheaf of correspondence between you and the five Washington hospitals and ask you to answer some questions in regard to it.

Did you not on July 27, 1937, call the Washington Sanitarium's attention to the Mundt Resolution (Gov. Ex. 236)?

A. Yes, sir.

Q. That is the first time you had ever done it, was it not?

A. No, sir.

Q. The Washington Sanitarium?

A. No, sir.

Q. When had you done that before?

A. In 1934.

Q. Oh, yes; when you sent out a round-robin letter to all hospitals?

A. Yes, sir.

Q. Was this the first time you had done that specifically in regard to that hospital?

A. So far as I can recall, that is the first time we had had any correspondence with this hospital since 1934.

Q. When did you say it had been approved for interne training?

A. I don't recall.

Q. When had it been inspected last?

A. I can't recall offhand.

Q. Did you not give that testimony yesterday? Did you not have a little notebook that you referred to?

A. I gave you the dates when some of these had been inspected but I don't know which one it was.

Q. Had Washington Sanitarium ever been inspected before by Peterson?

A. Yes, sir.

Q. When?

A. I don't remember when.

Q. Would you say it was 1933, the last time it had been examined?

A. I remember that one of these hospitals was examined in either 1933 or 1934, but I am not certain whether it was George Washington or Washington Sanitarium.

Q. After you made that suggestion to the Washington Sanitarium they wrote back and asked you a question about it, did they not?

A. Yes.

Q. And did they not say this (Gov. Ex. 235):

"Each application for staff appointment calls for the Medical Societies to which the applicant belongs. Would this meet the requirement of the resolution?"

Is that correct?

A. Yes, sir.

Q. And did you not respond to that inquiry?

A. Yes, sir.

Q. And did you not say in response to that inquiry, on October 5, 1937 (Gov. Ex. 231):

"As far as the resolution of the House of Delegates is concerned the intention remains that all hospitals stipulate membership in the County Medical Society as the basis for the assignment of hospital privileges. The great majority of hospitals with which we have corresponded on this point have agreed that this is a good basis on which to operate."

Is that right?

A. That was what the letter said.

Q. That is what you said?

A. I didn't write that letter.

Q. Did it not go out over your signature?

A. Yes.

Q. Then you were saying it, were you not?

A. No.

Q. Are you not willing to take responsibility for it?

A. I have to take responsibility for what I send out, but that is not what I dictated.

Q. Is not that what you would have dictated?

A. No, sir.

Q. Was there anything wrong with it?

A. It stated that the Council intended to stipulate that membership in a County Society must be required; that was not the intention of the Council.

Q. Did you not write to Sister Rodriguez of Georgetown Hospital? Georgetown was one that was applying for approval of residents, was it not?

A. Yes, sir.

Q. And did you not say in that letter (Gov. Ex. 237):

"What possibility, if any exists for the observance of this recommendation in Georgetown University Hospital?"

A. Yes, sir.

Q. Were you not referring to and quoting the Mundt Resolution?

A. Yes, sir.

Q. Did you not get back this answer from the Superintendent of that hospital (Gov. Ex. 238):

"The executive staff ruled in its last meeting"—This was as late as October 18, 1937, was it not?

A. Yes.

Q. (Continuing reading:) —"that no physician shall be nominated or elected to any staff of the hospital unless he is a member of his local medical society or the American Medical Association. Doctors who are already on the staffs specified by you as not meeting these requirements will be notified to qualify within the year."

Is not that what she told you?

A. Yes.

Q. Did you not regard that as an assurance of compliance with what you wanted to achieve?

A. Yes.

Q. Did you not write to Sister Margaret of Providence Hospital also in the summer of 1937, quoting the Mundt Resolution, and asking the same question of that hospital (Gov. Ex. 239)?

A. Yes, sir.

Q. And when had Providence Hospital been last inspected?

A. I don't recall.

Q. Was it one of those that was applying for residency that spring?

A. Yes, sir.

Q. Did you not say in the same letter that you had other criticisms of the hospital?

A. Yes, sir.

Q. And did you not say (Gov. Ex. 239) that—

"As matters now stand we believe it quite likely that when this statement is submitted to the Council at their next regular meeting in November, internship approval will be withdrawn"?

A. Yes.

Q. Was not one of the reasons for the opinion that you so stated the fact that Peterson's report disclosed that they were not confining their staffs to members of the American Medical Association?

A. No, sir.

Q. Did you point out in the letter that that criticism had no bearing upon this opinion of yours that the Council would withdraw the interneship approval?

A. That was not mentioned in that letter.

Q. But you did call, in that letter, her attention to this criticism?

A. Yes.

Q. You did quote the Mundt Resolution?

A. Yes.

Q. You did ask for her compliance?

A. I asked what they proposed to do about it.

Q. Did not she write back to you and say (Gov. Ex. 240):

"No words can express my distress at the possibility of losing the American Medical Association's approbation of our interne training school. Nothing will be omitted either by the staff of the hospital or the superintendent to prevent

what would prove a dire catastrophe to Providence Hospital, the loss of its credit for interne training."

Did you not regard that as assurance that she would eliminate the things you criticized?

A. Not necessarily all of them.

Q. Well, you felt that that was sufficient assurance that all of them would be eliminated, when she said that nothing would be omitted. She told you nothing would be omitted, did she not?

A. I think she qualified that by saying that nothing that they could do—the approval of hospitals was not based on a requirement that every single recommendation should be carried out a hundred per cent. It was based on the entire picture of the hospital and its ability to give good training to internes.

Q. Did not she in that letter promise you one hundred percent compliance, and did you not so understand it?

Mr. Leahy: The letter speaks for itself. Let us not argue with the witness.

Q. Is there any qualification of this statement? (Reading):

"Nothing will be omitted either by the staff of the hospital or the superintendent"—

Is not that what she said?

A. I don't recall that. You have the letter.

Mr. Leahy: The letter speaks for itself, if your Honor please.

Q. Did she not write to you again on October 12 and give you definite assurances with regard to this Mundt Resolution requirement, in specific terms?

A. My recollection is that in that letter she said that the criticisms in the report were very well founded and that the staff had unanimously agreed to meet all of the suggestions.

Q. Did she not say this (Gov. Ex. 241):

"Members of the staff who did not belong to the Medical Society of the District of Columbia have been contacted and at the present time all members have submitted their applications for membership, so that now, with those exceptions, all members of our staff are members of the American

Medical Association or affiliated with its constituent societies."

Is that right?

A. I don't have the letter before me, but that may be a correct statement.

Q. The letter is right before you, Dr. Cutter. That is why I gave you the exhibits. That is Exhibit No. 241. I think I have quoted that letter correctly.

A. I think you have, too; but I could not verify it without seeing it.

A. Yes, sir; that is as you read it.

Q. And she was assuring you then that she was taking steps to comply with the Mundt Resolution?

A. Yes, sir.

Q. Let us turn to George Washington University Hospital. In August, 1937, you made the same suggestion to George Washington Hospital (Gov. Ex. 242), did you not?

A. That is right.

Q. And you got a reply from the Medical Director, Dr. Bloedorn (Gov. Ex. 243) did you not?

A. Yes, sir.

Q. He did not say anything about the staff membership requirement in that first letter, did he, so that you had to write again?

A. He did not reply at all for quite a long time. That is why I had to write a second time. I got no reply.

Q. When you wrote again you said this (Gov. Ex. 215):

"Has any action been taken with respect to the resolution of the House of Delegates on the subject of staff membership contained in our letter of August 23."

You wrote that in October, 1937, did you not?

A. That is correct.

Q. And then he responded to that, did he not, on November 4?

A. Yes, sir.

Q. Did he not say (Gov. Ex. 243):

"With respect to the resolution of the House of Delegates on the subject of staff membership, we find that only nine members of the total staff are not members of the local Medical Society, and that of these nine, six are full time members of the staff of St. Elizabeth's Hospital in the department of psychiatry. As we do not have a psychiatric

department in George Washington University Hospital, these members are used primarily in a teaching capacity for our medical students who go to St. Elizabeth's Hospital, which, as you know, is a psychiatric institution."

Then did he not say this:

"The problem, then, is reduced to three members of the clinical staff."

A. Yes, sir.

Q. Did you not take that as assurance that you were going to have compliance with the Mundt Resolution in that hospital?

A. It does not indicate complete compliance, because there were nine who were not members.

Q. Did he not explain that that problem was reduced to three; that six of them were on the teaching staff of a psychiatric institution?

A. But they were not members of the District Society.

Q. He told you he was going to reduce that very shortly. Is not that what he assured you of?

A. That is what he said; yes.

Q. You adopted the same method with regard to Columbia Hospital, did you not?

A. The same kind of a letter (Gov. Ex. 223) was sent to Columbia Hospital.

Q. He did not reply to it, did he, from September 8 until in November?

A. Oh, no; he replied on the 14th of September (Gov. Ex. 224).

Q. Oh. Did he? He did not reply with regard to the Mundt Resolution, did he?

A. There was no reference to it in that letter.

Q. So you wrote him on November 3, 1937 (Gov. Ex. 227) again, asking if he was in position to report any action on the Peterson report, and saying, did you not—

"This present inquiry also extends to the resolution which was quoted in our letter of September 8 relating to County Society membership as a basis for hospital privileges."

A. There were two letters in between there, but this letter is correct.

Q. And did you not receive a reply (Gov. Ex. 228) then, to that inquiry, from the superintendent of Columbia Hospital on November 5, 1937?

A. Yes, sir; November 5.

Q. Did he not say (Gov. Ex. 228):

"As for the demand that physicians on the staffs of hospitals approved for interne training should be limited to members in good standing of their local County Medical Societies, it meets with the approval of the Medical Board as regards future appointments."

A. Yes.

Q. (Continuing reading:) "So far as known, all the present members of the staff of this hospital, except one, are members of the District Medical Society. The exception is a man of long service in the hospital and of high standing in the profession. His reasons for not belonging to the Society are probably personal, and nobody on the Medical Board suggested that any action be taken in his case."

A. Yes, sir.

Q. Did you not find that reply satisfactory and a substantial compliance?

A. Yes, sir.

Q. Was Columbia then approved for interne training?

A. No, sir.

Q. Was it approved for interne training later?

A. No, sir.

Q. Why were you bringing the Mundt Resolution to the attention of the Columbia Hospital? Did you go outside of the hospitals that you were approving for interne training to enforce this resolution?

A. I think it was just a matter of routine that it got in there by accident, because it never was an interne hospital. It is a special hospital.

Q. You had more correspondence on this subject with Columbia than you did with any of the others, did you not?

A. I would not say it was more than we had with any of the others.

Q. Any of the other five here; is not that right?

A. I don't know the exact number of letters. It may be.

Q. As a matter of fact, most of this correspondence that we have called your attention to was after you had had occasion to read Dr. Woodward's article which Dr. Fishbein

published in the American Medical Association Journal regarding Group Health; is not that right?

A. The correspondence began on the 8th of September and was followed up on the 14th, 17th, and 29th of September. It was not until November that any letter was written after the publication of that article.

Q. The article was published on October 2?

A. That is right.

Q. And Dr. Woodward had been writing it through the summer?

A. I don't know anything about that.

Q. Had he not submitted a draft of it early in September?

A. I don't know.

Q. You do not know anything about that either?

A. Certainly not.

Redirect examination:

Page 40 of the proceedings of the House of Delegates of the AMA at Atlantic City, June 7 through June 11, 1937 (Gov. Ex. 608) deals with the invitation of representatives of the Judicial Council to meet with the Council on Medical Education and Hospitals. At that time the Judicial Council wanted some cooperation from the Council on Medical Education and Hospitals with reference to the practice of medicine by hospitals, particularly in connection with the Department of Radiology. This cooperation which the Judicial Council wanted had nothing at all to do with group practice, prepayment plans, contract practice of medicine, or anything of that sort, and "related to the practice of some hospitals of going into the practice of medicine through their radiological department and furnishing radiological service to the public, and in connection with that they very frequently exploited their radiologist." Cooperation was desired by the Judicial Council in a "situation which occurred in some hospitals wherein the hospital might take in $50,000 or $70,000 on its radiological department, and then employ a man to do the work at perhaps a salary of $5,000; and the practitioners in those localities, and particularly the radiologists felt that was a very unfair arrangement, and they had appealed to the Judicial Council to see if something could be done to stop it." The Council thought something ought to be done to stop the exploitation of patients by a practice of that kind, and the profession felt the same way; and that is what we were all

going to cooperate together to try to prevent. It did not have anything to do with Group Health, with contract practice, with Mt. Sinai Hospital, or with the Milwaukee Medical Association.

Pages 40 and 41 of the proceedings of the House of Delegates held June 10 to June 14, 1935 (Gov. Ex. 606), did not have anything whatsoever to do with group practice of medicine, or contract practice of medicine, or prepayment plans, or however you might describe them. The proceedings had reference to this radiology situation. The Council and the Judicial Council had been discussing the matter of hospitals exploiting for two years, from 1933 to 1935. The Council recommended to the House of Delegates and "the general tenor * * * was that we had had conference between the Council on Medical Education and the Judicial Council and we had tried to cooperate with the Judicial Council by securing for them information concerning the operations of hospitals, in their radiological departments." The minutes of 1936 speak of a plan that was to be devised and the words are used there in the sense that it would take some time to work out a plan, and no very satisfactory one was ever worked out. The practice of which we were complaining, I don't think was finally stopped.

The American College of Surgeons examines hospitals and investigates hospitals to keep them up to standards. The distinction between that examination and the examination of the AMA is as follows:

"The examination which we make of hospitals is directed to their educational program for internes and residents. The examination which the College of Surgeons makes is not directed to the educational function of the hospital, but rather to the function of rendering medical care to its patients—medical and surgical care; and the approval of the College of Surgeons is based upon an examination of the hospital with reference to its ability to provide good, sound medical care for its patients."

The American College of Surgeons was founded in 1913 and its program of inspection of hospitals began just after the war in 1918 or 1919. There are no other agencies which have facilities for inspecting hospitals. The AMA changed the title of the Council from the Council on Medical Education to the Council on Medical Education and Hospitals in

1919, and the actual visitation of hospitals began a few years later, about 1923. From that time the approval given by the AMA has been recognized generally throughout the United States and our registration of hospitals is utilized by the Government of the United States very extensively.

Q. Is it utilized now on the question of the national defense?

A. Yes; it is.

Mr. Lewin: Wait a minute.

Mr. Leahy: It is on the question of the value of approval.

The Court: I will sustain the objection. We are dealing with a different period here. Exception.

Q. What is the attitude of the Council with reference to any hospital, whether it is in Milwaukee, Seattle, Chicago, Washington, D. C., Boston, or any other city that you can think of, which retains upon its staff five doctors who have been expelled from their local medical society by the vote of the majority of the members as being unworthy of belonging to the society?

A. The Council would feel that such hospital did not conform to the requirements of the essentials for a registered hospital.

The membership of the staff of a hospital is of the greatest importance because the character of the service which is rendered in the hospital depends upon the character and qualifications of the physicians who compose its staff. Under the "Essentials of a Registered Hospital" (Def. Ex. 11) the ethical standing of a doctor who is on the staff is taken into consideration as well as his ability. I use the word "ethical" in reference "to the principles of ethics adopted by our Association," and these principles of ethics of the AMA represent "substantially the principles of ethics which are recognized by all physicians, whether they are or are not members of the AMA." These principles of ethics are usually traced back to the time of Hippocrates, 2,400 years ago.

Q. What is the attitude of the Council of which you are the secretary where a hospital retains upon its staff five men who refuse to abide by and to perform in accordance with those principles of ethics?

A. The Council would consider that such a hospital did not conform to the standards for a registered hospital.

Q. What action then would the Council take with reference to those five doctors, if any?

A. None with reference to them. It would take the hospital off the registered list.

Q. Do you require any hospital to seek registration?

A. No, sir.

Q. Is it not their voluntary act and request?

A. Entirely.

Q. And what you do then is to withdraw the privilege of registration from a hospital; is that right?

A That is it.

Q Do you still leave it free for the hospital to keep those doctors on their staff if they want to?

A. Certainly.

Q. Does your Council in any way undertake to impose its will upon the administration of any hospital?

A. The Council does not try to impose its will on any hospital.

Q. For instance, in the city of Washington, when these letters were written, this correspondence back and forth with George Washington, Georgetown, Columbia, and so forth, when, for instance, you found that on the George Washington Hospital staff there were nine doctors who were not members of the Medical Society, six of whom were in St. Elizabeth's Hospital, three of whom were not members of the Medical Society: What action did your Council take with regard to withholding approval from George Washington University Hospital?

A. None at all.

Q. In the case of Columbia Hospital what action did you take?

A. None at all.

Q. And that was after you read the Woodward article, was it not?

A. Yes.

Q. What did you do with reference to the Washington Sanitarium?

A. Nothing.

Q. Did you, in connection with any single Washington hospital, Doctor, officially or otherwise exert threats or any pressure to compel the hospital to have on their staffs only members of the local society?

A. No, sir; we did not.

The paragraph which is numbered Arabic Two under Roman One of the Essentials of a Registered Hospital (Def. Ex. 11) refers to the staff, and under Roman numeral Three there are more details about the medical staff, and, when a hospital applies for approval to the Council, a copy of these Essentials is sent it and the hospital knows in advance of its application what requirements it must fulfill if it expects the application to be granted. The requirements are the essentials and we so publish them.

Def. Ex. 11, "Essentials of a Registered Hospital," prepared by the Council on Medical Education and Hospitals of the AMA, was read from to the jury as follows:

"General Statement.—Hospitals should be organized and conducted primarily for the purpose of providing facilities where the sick and the injured of the community may be given scientific and ethical medical care.

Registration is a basic distinction between all recognized hospitals and those that are refused recognition. It is a prerequisite to the consideration of a hospital for approval for internes or for residencies in specialties.

The registration of hospitals, the approval of hospitals for internes, approval for residencies in specialties, and all other service of the Association regarding hospitals is carried on by the Council on Medical Education and Hospitals. Separate essentials have been adopted for each of these types of approval.

It is the desire of the Council to cooperate in every way for the improvement of hospital service, whereby the sick and injured may be provided with scientific and ethical medical care.

The Council does not have nor does it assume legal authority over any hospital. It recognizes clearly that the officers in charge of such institutions have the unquestioned right to conduct the hospitals in any way they may deem wise. If a hospital desires to have its name appear on the American Medical Association hospital register and thus have the endorsement of that Association, it should be willing to comply with the principles which the Council on Medical Education and Hospitals considers necessary.

I. Organization.—1. The organization should consist of a supreme governing body qualified to administer a hospital. This may be a board of trustees or directors, a partnership

or an individual. Such a board, partnership or individual must assume final authority and responsibility for the administration.

2. There must be a well qualified executive officer who may be designated as administrator, superintendent or director or by some other title. This person should be responsible to the governing body for carrying out its policies. The executive officer should be assisted by competent personnel adequate to the needs of the institution.

II. Physical Plant.—1. The hospital plant should consist of modern, safe buildings maintained in a sanitary condition, provided with fire protection and adequately equipped and furnished for the comfort of patients. Equipment for diagnosis and treatment should be reasonably complete for all types of work the staff purports to carry on in the hospital.

2. Institutions accepting surgical and obstetric patients should provide a modernly equipped operating room, a delivery room, and a nursery. Hospitals that are strictly limited in the service they offer are not expected to have the complete organization and equipment of a general hospital.

III. Medical Staff.—1. Since the medical staff is the most important factor in the delivery of medical service to patients, too great care cannot be exercised in the selection of staff members. The staff should be limited to physicians holding the degree of Doctor of Medicine from medical colleges acceptable to the Council on Medical Education and Hospitals, having satisfactory qualifications as to training, licensure and ethical standing, and to dentists who are graduates of recognized dental colleges and whose professional ability and standing are known to the medical staff.

. . . . . .

3. The form of organization of the staff is determined by the size and the activity of the hospital in accordance with its needs.

4. In very small hospitals where there are few physicians and where an elaborate organization is not practicable, there should still be some authority competent to pass upon the qualifications of those who seek to use the hospital's facilities. Particular care should be exercised in the assignment

of surgical privileges since it is essential for the safety of patients that both the surgeon and his assistants be properly qualified.

5. Where further organization is needed it should consist of such officers as president, secretary and others; and committees, such as executive, medical records and credentials, elected or appointed according to the constitution and by-laws.

6. Staff departments such as medicine, obstetrics and surgery, should be organized as may seem wise.

7. Staff meetings should be held for the review of the work of the hospital, the discussion of results, the reports of autopsy and pathologic studies, the presentation of papers and such other matters as concern the professional work of the hospital."

And then follow others on what the pathology and laboratory diagnosis should be, how autopsies should be conducted; radiology, anesthesia, nursing service, dietetics, pharmacy, medical records, and so forth.

If, in examining a hospital, it is found that the hospital is not following the Essentials of a Registered Hospital "the first thing we would do would be to notify the hospital of the things we consider to be lacking, and if they were things that could be reasonably corrected, we would allow them to go on and correct them." The report on the examination of Providence Hospital, an interne hospital, has a summary to it and five points are noted regarding which it was suggested that improvements should be made. The copy of that report, with the five points for correction, was sent to Providence Hospital and the report contains nothing at all to the effect that Providence Hospital must comply with the Mundt Resolution, and it does not refer to anything concerning the staff or its membership.

There are four or five men in my department who handle correspondence, and it is not humanly possible for me to take care of all correspondence that comes to the office. I ask those men to prepare letters in reply to inquiries that come in and submit them to me for signature. The letter dated July 22, 1938 to the superintendent of the Tampa Municipal Hospital (Gov. Ex. 643), states:

"Thank you for your letter of June 29 in which you invite the Council to send a representative to assist you in

the solution of certain problems now confronting the Tampa Municipal Hospital.

It is unlikely that we can release one of our staff men now or in the near future, since the field work is necessarily planned well in advance. You may be sure, however, that the Council desires to be kept informed of what developments may take place. If later it seems desirable a visit may be arranged.

The Council is well aware of the situation existing in Tampa between the Hillsboro County Medical Society and the doctors serving the Latin population through fraternal clubs on a contract basis. The position of the hospital has always been under the purview of the Council. A reasonable amount of time has elapsed during which a solution might have been effected."

Then it says that the Council on Medical Education and Hospitals is carrying out the edict of the House of Delegates of the American Medical Association, and it quotes the resolution, and it goes on to say:

"The principle involved is one of unethical contract practice by members of your hospital staff. This is in conflict with the resolution as well as with your own staff constitution and by-laws. No action for removal of the hospital from the approved list will be taken immediately, and I believe the Council can see its way clear to carry the name of the Tampa Municipal Hospital in the forthcoming list to be printed in the Educational number of the Journal of the American Medical Association, August 27, 1938. If a satisfactory settlement cannot be made during the current year, the recognition of the hospital by the Council may be jeopardized."

Now let me ask you this. If a hospital is operating in conflict with its own staff constitution and by-laws, what effect would that have with respect to the Council's recognition of the hospital so acting in violation of its own staff constitution and by-laws?

A. It would be regarded as a serious breach of the standards which we have proposed.

We published the name of that hospital in the AMA Educational Number of the Journal and gave them a year in which to try to effect an improvement, and, while a year was

mentioned, actually no action was taken at the end of the year, and the hospital remained on the register.

The staff of a hospital which is approved for interne training has more importance from the standpoint of selection of membership than the staff of another hospital which is not engaged in interne training, because it is responsible for teaching young men who have come to them for instruction. In that respect concerning the ethical practice of one teaching younger doctors, he should be a good example to the men he is teaching and that is precisely what we have in mind with reference to the staff when we state in the "Essentials of a Registered Hospital" that it must be an ethical staff, as we are looking out for the young men who are coming up to be doctors.

In the examination of hospitals we always try to ascertain whether the practice which is carried on there is satisfactory and in accordance with modern standards.

Q. Can you tell us what the purpose of the Mundt Resolution was, that is the purpose of the House of Delegates in adopting it?

The Government objected and the objection was sustained and exception was noted.

I don't know how many hospitals have adopted the principle set forth in the Mundt Resolution, and I have no definite information on that. I don't recall exactly what the action of the hospitals in the city of Washington was concerning the principles in the Mundt Resolution, but I think that Providence took some action similar to Georgetown. I do not recall the date that Georgetown Hospital put in effect the principles stated in the Mundt Resolution.

Q. After you read the Woodward article in October of 1937, Doctor, what did you do toward bringing the Mundt Resolution to the notice of the other hospitals in Washington which had not been examined?

A. Nothing.

Q. Did you personally, or through anybody else, bring the Mundt Resolution to their attention?

A. No, sir.

Q. Was anything done with respect to the Washington hospitals differently from what was done with reference to every other hospital in the United States, so far as the Mundt Resolution was concerned?

A. There was nothing different.

Dr. Cutter identified the Principles of Medical Ethics attached to Gov. Ex. 1, a stipulation, and they were read to the jury from the stipulation, as follows:

"Principles of Medical Ethics.

Chapter I.

In General:

The Physician's Responsibility

Section 1.—A profession has for its prime object the service it can render to humanity; reward or financial gain should be a subordinate consideration.

The practice of medicine is a profession. In choosing this profession an individual assumes an obligation to conduct himself in accord with its ideals.

Groups and Clinics.

Section 2.—The ethical principles actuating and governing a group or clinic are exactly the same as those applicable to the individual. As a group or clinic is composed of individual doctors, each of whom, whether employer, employee or partner, is subject to the principles of ethics herein elaborated, the uniting into a business or professional organization does not relieve them either individually or as a group from the obligation they assume when entering the profession.

Chapter II. The Duties of Physicians to Their Patients.

Patience, Delicacy and Secrecy.

Section 1.—Patience and delicacy should characterize all the acts of a physician. The confidence concerning individual or domestic life entrusted by a patient to a physician and the defects of disposition or flaws of character observed in patients during medical attendance should be held as a trust and should never be revealed except when imperatively required by the laws of the state. There are occasions, however, when a physician must determine whether or not his duty to society requires him to take definite action to protect a healthy individual from becoming infected, because the physician has knowledge, obtained through the confidences entrusted to him as a physician, of a communicable disease to which the healthy individual

is about to be exposed. In such a case, the physician should act as he would desire another to act toward one of his own family under like circumstances. Before he determines his course, the physician should know the civil law of his commonwealth concerning privileged communications.

Prognosis.

Section 2.—A physician should give timely notice of dangerous manifestations of the disease to the friends of the patient. He should neither exaggerate nor minimize the gravity of the patient's condition. He should assure himself that the patient or his friends have such knowledge of the patient's condition as will serve best interests of the patient and the family.

Patients Must Not Be Neglected.

Section 3.—A physician is free to choose whom he will serve. He should, however, always respond to any request for his assistance in an emergency or whenever temperate public opinion expects the service. Once having undertaken a case, a physician should not abandon or neglect the patient because the disease is deemed incurable; nor should he withdraw from the case for any reason until a sufficient notice of a desire to be released has been given the patient or his friends to make it possible for them to secure another medical attendant.

Chapter III.

The Duties of Physicians to Each Other and to the Profession at Large.

Article I.—Duties to the Profession.

Uphold Honor of Profession.

Section 1.—The obligation assumed on entering the profession requires the physician to comport himself as a gentleman and demands that he use every honorable means to uphold the dignity and honor of his vocation, to exalt its standards and to extend its sphere of usefulness. A physician should not base his practice on an exclusive dogma or sectarian system, for 'sects are implacable despots; to

accept their thraldom is to take away all liberty from one's action and thought.' (Nicon, father of Galen.)

Medical Societies.

Section 2.—In order that the dignity and honor of the medical profession may be upheld, its standards exalted, its sphere of usefulness extended, and the advancement of medical science promoted, a physician should associate himself with medical societies and contribute his time, energy and means in order that these societies may represent the ideals of the profession.

Deportment.

Section 3.—A physician should be an 'upright man, instructed in the art of healing.' Consequently, he must keep himself pure in character and conform to a high standard of morals, and must be diligent and conscientious in his studies. 'He should also be modest, sober, patient, prompt to do his whole duty without anxiety; pious without going so far as superstition, conducting himself with propriety in his profession and in all the actions of his life.' (Hippocrates.)

Advertising.

Section 4.—Solicitation of patients by physicians as individuals, or collectively in groups by whatsoever name these be called, or by institutions or organizations, whether by circulars or advertisements, or by personal communications, is unprofessional. This does not prohibit ethical institutions from a legitimate advertisement of location, physical surroundings and special class—if any—of patients accommodate. It is equally unprofessional to procure patients by indirection through solicitors or agents of any kind, or by indirect advertisement, or by furnishing or inspiring newspaper or magazine comments concerning cases in which the physician has been or is concerned. All other like self-laudations defy the traditions and lower the tone of any profession and so are intolerable. The most worthy and effective advertisement possible, even for a young physician, and especially with his brother physicians, is the establishment of a well-merited reputation for professional ability and fidelity. This cannot be forced, but must be the outcome of character and conduct. The publication or cir-

culation of ordinary simple business cards, being a matter of personal taste or local custom, and sometimes of convenience, is not per se improper. As implied, it is unprofessional to disregard local customs and offend recognized ideals in publishing or circulating such cards.

It is unprofessional to promise radical cures; to boast of cures and secret methods of treatment or remedies; to exhibit certificates of skill or of success in the treatment of diseases; or to employ any methods to gain the attention of the public for the purpose of obtaining patients.

Patents and Perquisites.

Section 5.—It is unprofessional to receive remuneration from patents for surgical instruments or medicines; to accept rebates on prescriptions or surgical appliances, or perquisites from attendants who aid in the care of patients.

Medical Laws—Secret Remedies.

Section 6.—It is unprofessional for a physician to assist unqualified persons to evade legal restrictions governing the practice of medicine; it is equally unethical to prescribe or dispense secret medicines or other secret remedial agents, or manufacture or promote their use in any way.

Safeguarding the Profession.

Section 7.—Physicians should expose without fear or favor, before the proper medical or legal tribunals, corrupt or dishonest conduct of members of the profession. All questions affecting the professional reputation or standing of a member or members of the medical profession should be considered only before proper medical tribunals in executive sessions or by special or duly appointed committees on ethical relations. Every physician should aid in safeguarding the profession against the admission to its ranks of those who are unfit or unqualified because deficient either in moral character or education.

Article II.—Professional Services of Physicians to Each Other.

Physicians Dependent on Each Other.

Section 1.—Experience teaches that it is unwise for a physician to treat members of his own family or himself.

Consequently, a physician should always cheerfully and gratuitously respond with his professional services to the call of any physician practicing in his vicinity, or of the immediate family dependents of physicians.

Compensation for Expenses.

Section 2.—When a physician from a distance is called on to advise another physician or one of his family dependents, and the physician to whom the service is rendered is in easy financial circumstances, a compensation that will at least meet the traveling expenses of the visiting physician should be proffered. When such a service requires an absence from the accustomed field of professional work of the visitor that might reasonably be expected to entail a pecuniary loss, such loss should, in part at least, be provided for in the compensation offered.

One Physician to Take Charge.

Section 3.—When a physician or a member of his dependent family is seriously ill, he or his family should select a physician from among his neighboring colleagues to take charge of the case. Other physicians may be associated in the care of the patient as consultants.

Article III.—Duties of Physician in Consultations.

Consultation Should be Encouraged.

Section 1.—In serious illness, especially in doubtful or difficult conditions, the physician should request consultations.

Consultations for Patient's Benefit.

Section 2.—In every consultation, the benefit to be derived by the patient is of first importance. All the physicians interested in the case should be frank and candid with the patient and his family. There never is occasion for insincerity, rivalry or envy and these should never be permitted between consultants.

Punctuality.

Section 3.—It is the duty of a physician, particularly in the instance of a consultation, to be punctual in attendance. When, however, the consultant or the physician in charge is

unavoidably delayed, the one who first arrives should wait for the other for a reasonable time, after which the consultation should be considered postponed. When the consultant has come from a distance, or when for any reason it will be difficult to meet the physician in charge at another time; or if the case is urgent, or if it be the desire of the patient, he may examine the patient and mail his written opinion, or see that it is delivered under seal, to the physician in charge. Under these conditions, the consultant's conduct must be especially tactful; he must remember that he is framing an opinion without the aid of the physician who has observed the course of the disease.

Patient Referred to Specialist.

Section 4.—When a patient is sent to one specially skilled in the care of the condition from which he is thought to be suffering, and for any reason it is impracticable for the physician in charge of the case to accompany the patient, the physician in charge should send to the consultant by mail, or in the care of the patient under seal, a history of the case, together with the physician's opinion and an outline of the treatment; or so much of this as may possibly be of service to the consultant; and as soon as possible after the case has been seen and studied, the consultant should address the physician in charge and advise him of the results of the consultant's investigation of the case. Both these opinions are confidential and must be so regarded by the consultant and by the physician in charge.

Discussions in Consultation.

Section 5.—After the physicians called in consultation have completed their investigations of the case, they should meet by themselves to discuss conditions and determine the course to be followed in the treatment of the patient. No statement or discussion of the case should take place before the patient or friends, except in the presence of all the physicians attending or by their common consent; and no opinions or prognostications should be delivered as a result of the deliberations of the consultants, which have not been concurred in by the consultants at their conference.

Attending Physician Responsible.

Section 6.—The physician in attendance is in charge of the case and is responsible for the treatment of the patient.

Consequently, he may prescribe for the patient at any time and is privileged to vary the mode of treatment outlined and agreed on at a consultation whenever, in his opinion, such a change is warranted. However, at the next consultation, he should state his reasons for departing from the course decided at the previous conference. When an emergency occurs during the absence of the attending physician, a consultant may provide for the emergency and the subsequent care of the patient until the arrival of the physician in charge, but should do no more than this without the consent of the physician in charge.

Conflict of Opinion.

Section 7.—Should the attending physician and the consultant find it impossible to agree in their view of a case another consultant should be called to the conference or the first consultant should withdraw. However, since the consultant was employed by the patient in order that his opinion might be obtained, he should be permitted to state the result of his study of the case to the patient, or his next friend in the presence of the physician in charge.

Consultant and Attendant.

Section 8.—When a physician has attended a case as a consultant, he should not become the attendant of the patient during that illness except with the consent of the physician who was in charge at the time of the consultation.

Article IV.—Duties of Physicians in Cases of Interference.

Misunderstandings to be Avoided.

Section 1.—The physician, in his intercourse with a patient under the care of another physician, should observe the strictest caution and reserve; should give no disingenuous hints relative to the nature and treatment of the patient's disorder; nor should the course of conduct of the physician, directly or indirectly, tend to diminish the trust reposed in the attending physician. In embarrassing situations, or wherever there may seem to be a possibility of misunderstanding with a colleague, the physician should always seek a personal interview with his fellow.

Social Calls on Patient of Another Physician.

Section 2.—A physician should avoid making social calls on those who are under the professional care of other physicians without the knowledge and consent of the attendant. Should such a friendly visit be made, there should be no inquiry relative to the nature of the disease or comment upon the treatment of the case, but the conversation should be on subjects other than the physical condition of the patient.

Services to Patient of Another Physician.

Section 3.—A physician should never take charge of or prescribe for a patient who is under the care of another physician, except in an emergency, until after the other physician has relinquished the case or has been properly dismissed.

Criticism Should be Avoided.

Section 4.—When a physician does succeed another physician in the charge of a case, he should not make comments on or insinuations regarding the practice of the one who preceded him. Such comments or insinuations tend to lower the esteem of the patients for the medical profession and so react against the critic.

Emergency Cases.

Section 5.—When a physician is called in an emergency and finds that he has been sent for because the family attendant is not at hand, or when a physician is asked to see another physician's patient because of an aggravation of the disease, he should provide only for the patient's immediate need and should withdraw from the case on the arrival of the family physician after he has reported the condition found and the treatment administered.

When Several Physicians are Summoned.

Section 6.—When several physicians have been summoned in a case of sudden illness or of accident, the first to arrive should be considered the physician in charge. However, as soon as the exigencies of the case permit, or on the arrival of the acknowledged family attendant or the physician the patient desires to serve him, the first physician should withdraw in favor of the chosen attendant; should the patient

or his family wish someone other than the physician known to be the family physician to take charge of the case the patient should advise the family physician of his desire. When, because of sudden illness or accident, a patient is taken to a hospital, the patient should be returned to the care of his known family physician as soon as the condition of the patient and the circumstances of the case warrant this transfer.

A Colleague's Patient.

Section 7.—When a physician is requested by a colleague to care for a patient during his temporary absence, or when, because of an emergency, he is asked to see a patient of a colleague, the physician should treat the patient in the same manner and with the same delicacy as he would have one of his own patients cared for under similar circumstances. The patient should be returned to the care of the attending physician as soon as possible.

Relinquishing Patient to Regular Attendant.

Section 8.—When a physician is called to the patient of another physician during the enforced absence of that physician, the patient should be relinquished on the return of the latter.

Substituting in Obstetric Work.

Section 9.—When a physician attends a woman in labor in the absence of another who has been engaged to attend, such physician should resign the patient to the one first engaged, upon his arrival; the physician is entitled to compensation for the professional services he may have rendered.

Article V.—Differences between physicians.

Arbitration.

Section 1.—Whenever there arises between physicians a grave difference of opinion which cannot be promptly adjusted, the dispute should be referred for arbitration to a committee of impartial physicians, preferably the Board of Censors of a component county society of the American Medical Association.

Article VI.—Compensation.

Limits of Gratuitous Service.

Section 1.—The poverty of a patient and the mutual professional obligation of physicians should command the gratuitous services of a physician. But endowed institutions and organizations for mutual benefit, or for accident, sickness and life insurance, or for analogous purposes, have no claim upon physicians for unremunerated services.

Conditions of Medical Practice.

Section 2.—It is unprofessional for a physician to dispose of his services under conditions that make it impossible to render adequate service to his patient or which interfere with reasonable competition among the physicians of a community. To do this is detrimental to the public and to the individual physician, and lowers the dignity of the profession.

Contract Practice.

Section 3.—By the term 'contract practice' as applied to medicine is meant the carrying out of an agreement between a physician or a group of physicians, as principals or agents, and a corporation, organization, political subdivision or individual, to furnish partial or full medical services to a group or class of individuals on the basis of a fee schedule, or for a salary or a fixed rate per capita.

Contract practice per se is not unethical. However, certain features or conditions if present make a contract unethical, among which are: 1. When there is solicitation of patients, directly or indirectly. 2. When there is underbidding to secure the contract. 3. When the compensation is inadequate to assure good medical service. 4. When there is interference with reasonable competition in a community. 5. When free choice of a physician is prevented. 6. When the conditions of employment make it impossible to render adequate service to the patients. 7. When the contract because of any of its provisions or practical results is contrary to sound public policy. The phrase 'free choice of physician,' as applied to contract practice, is defined to mean that degree of freedom in choosing a physician which can be exercised under usual conditions of employment between patient and physician when no third

party has a valid interest or intervenes. The interjection of a third party who has a valid interest or who intervenes does not per se cause a contract to be unethical. A 'valid interest' is one where, by law or necessity, a third party is legally responsible either for cost of care or for indemnity. 'Intervention' is the voluntary assumption of partial or full financial responsibility for medical care. Intervention shall not proscribe endeavor by component or constituent medical societies to maintain high quality of service rendered by members serving under approved sickness service agreements between such societies and governmental boards and bureaus and approved by the respective societies.

Each contract should be considered on its own merits and in the light of surrounding conditions. Judgment should not be obscured by immediate, temporary or local results. The decision as to its ethical or unethical nature must be based on the ultimate effect for good or ill on the people as a whole.

Commissions.

Section 4.—When a patient is referred by one physician to another for consultation or for treatment, whether the physician in charge accompanies the patient or not, it is unethical to give or to receive a commission by whatever term it may be called or under any guise or pretext whatsoever.

Direct Profit to Lay Groups.

Section 5.—It is unprofessional for a physician to dispose of his professional attainments or services to any lay body, organization, group or individual, by whatever name called, or however organized, under terms or conditions which permit a direct profit from the fees, salary or compensation received to accrue to the lay body or individual employing him. Such a procedure is beneath the dignity of professional practice, is unfair competition with the profession at large, is harmful alike to the profession of medicine and the welfare of the people, and is against sound public policy.

Chapter IV.

The Duties of the Profession to the Public.

Physicians as Citizens.

Section 1.—Physicians, as good citizens and because their professional training specially qualifies them to render this service, should give advice concerning the public health of the community. They should bear their full part in enforcing its laws and sustaining the institutions that advance the interests of humanity. They should cooperate especially with the proper authorities in the administration of sanitary laws and regulations. They should be ready to counsel the public on subjects relating to sanitary police, public hygiene and legal medicine.

Public Health.

Section 2.—Physicians, especially those engaged in public health work, should enlighten the public regarding quarantine regulations; on the location, arrangement and dietaries of hospitals, asylums, schools, prisons and similar institutions; and concerning measures for the prevention of epidemic and contagious diseases. When an epidemic prevails, a physician must continue his labors for the alleviation of suffering people, without regard to the risk of his own health or life or to financial return. At all times, it is the duty of the physician to notify the properly constituted public health authorities of every case of communicable disease under his care, in accordance with the laws, rules and regulations of the health authorities of the locality in which the patient is.

Public Warned.

Section 3.—Physicians should warn the public against the devices practiced and the false pretensions made by charlatans which may cause injury to health and loss of life.

Pharmacists.

Section 4.—By legitimate patronage, physicians should recognize and promote the profession of pharmacy; but any pharmacist, unless he be qualified as a physician, who assumes to prescribe for the sick, should be denied such countenance and support. Moreover, whenever a druggist or a pharmacist dispenses deteriorated or adulterated drugs, or substitutes one remedy for another designated in a prescription, he thereby forfeits all claims to the favorable consideration of the public and physicians.

Conclusion.

While the foregoing statements express in a general way the duty of the physician to his patients, to other members of the profession and to the profession at large, as well as of the profession to the public, it is not to be supposed that they cover the whole field of medical ethics, or that the physician is not under many duties and obligations besides those herein set forth. In a word, it is incumbent on the physician that under all conditions, his bearing toward patients, the public and fellow practitioners should be characterized by a gentlemanly deportment and that he constantly should behave toward others as he desires them to deal with him. Finally, these principles are primarily for the good of the public, and their enforcement should be conducted in such a manner as shall deserve and receive the endorsement of the community.

With reference to the Tampa Hospital, they were not taken from the register within one year from July 22, 1938. I do not think that at any time subsequent thereto the Tampa Hospital was removed from the register.

Recross-examination.

Q. Is it not true that those doctors who had been engaged in Tampa in rendering medical services to these fraternal clubs, to these groups with a Latin population, and who had been on the staff of the Tampa Municipal Hospital, were required to resign from the staff of the Tampa Municipal Hospital?

A. I couldn't say whether they were required to resign; I think they did resign.

Q. The hospital dropped them as a result of your activities?

A. I think not.

Q. The hospital dropped them; you will agree with that?

A. Yes.

Q. Now, before they did resign you did withdraw registration from that hospital?

A. No, sir.

Q. Didn't your Council drop the Tampa Municipal Hospital for this reason and only reinstate them because a suit for injunction was filed?

A. I think not.

* * * * * * *

Q. First didn't the Tampa Municipal Hospital drop these doctors in question? From its staff?

A. That is my recollection.

Q. And didn't those doctors go into court and obtain an injunction preventing that discharge?

A. Something of that sort occurred; I am not certain of the details.

Q. And after that didn't you notify that hospital that your council was withdrawing its approval from that hospital?

A. Not within the period covered by this investigation.

Q. Oh, well, now, I didn't ask you that. I asked you if after that time, didn't you then take action and withdraw them from your approved list?

A. It was quite a long time after that.

Q. Specifically, wasn't it February 17, 1940, and isn't that a copy of your letter to the hospital (Gov. Ex. 641)?

A. That is a correct copy of the letter of February 17, 1940.

Q. (Reading Gov. Ex. 641):

"My Dear Mr. McKay:

"The Council on Medical Education and Hospitals, meeting on February 11, voted to withdraw approval for the training of interns at the Tampa Municipal Hospital. As a result of the changes which have been made recently in the organization of the medical staff, the Council is convinced that the hospital is no longer capable of fulfilling the requirements fixed by this Council and ratified by our House of Delegates."

Weren't the changes in the organization of the medical staff referred to this reinstatement of those doctors produced by their injunction suit?

A. That was one of the changes.

Q. Was that one of the changes referred to in this letter, which caused you to withdraw approval for interne training at that hospital?

A. The changes referred to in the letter were that the entire staff of the hospital had been changed and within six months thereafter had undergone an almost complete change again, so that there was no continuity of service or supervision over the training of internes.

Q. Weren't the changes that you referred to in this letter, and which caused you to act in withdrawing that ap-

proval, the fact that these doctors whom you had objected to were reinstated on the staff of the Municipal Hospital by order of the equity court down there?

A. That was not the only reason.

Q. That was one of them?

A. That was one of them.

Q. And wasn't the other one, the other change in the staff, that the rest of the staff members of the AMA, withdrew from the Tampa Hospital when these doctors were reinstated by the court?

A. No, I think not.

Q. Is there any truth in what I have asked you?

A. I know that a good many of the members of the Society did stay on the staff.

Q. And a good many left?

A. Some of them.

Q. I just want to ask him about this other change, whether the other change in the medical staff which you refer to in that letter was not the change that resulted when a group of AMA doctors left that hospital because these other doctors to whom you objected had been reinstated by the Court?

A. I couldn't say whether that was the reason why they left, but all I can say is there was a complete change in the staff of the hospital at one period, and within six months a complete change again, and we notified the hospital that if they couldn't keep a staff more regularly than that we couldn't depend on it to carry out our educational program.

Q. But, there was a substantial change in the personnel of the staff shortly after the injunction suit was decided?

A. There were two almost complete changes of the staff within six months or so.

Q. Didn't you understand that there was a connection between those changes and the injunction action?

A. I have forgotten just where the injunction action came in.

Q. The principles of medical ethics were introduced through your testimony. Do you recall that provision of the principles which says that contract practice may be unethical if it is contrary to sound public policy?

A. Yes.

Q. Do you understand that to mean that the American Medical Association is the judge of what is sound public policy in connection with contract practice?

A. The American Medical Association would have to judge how to apply that phraseology in their consideration of the evidence.

Q. Doesn't it usually act in that regard through the Judicial Council?

A. Yes.

Q. And don't you know it to be the fact that the Judicial Council has consistently failed to define what they mean by "contrary to sound public policy"?

A. I am not aware of that.

Q. Aren't you aware of these transactions in the Judicial Council which I now read you, from Exhibit 137:

These proceedings were November 12, 1937—

"The secretary presented the request of Dr. Kinsley Roberts, Medical Director of the Bureau of Cooperative Medicine of the Cooperative League of the United States of America, for definitions of 'solicitation,' 'advertising,' and 'contrary to good public policy.'

No definite action was taken by the Council but there was no objection to giving Doctor Roberts the definition of 'solicitation' as adopted by the Judicial Council. The Judicial Council has never defined the terms 'advertising' or 'contrary to good public policy.'"

Didn't you know that?

A. No, I never heard that before.

Q. Did you ever see a definition of "sound public policy" as used in circumscribing the proper limits of contract practice?

A. I don't recall.

Q. As far as you know, the matter is completely within the caprice of the Judicial Council, without any standard to guide it as to what is or is not sound public policy?

A. I wouldn't say that, no.

Redirect examination.

I have never seen a definition of "sound public policy" in the law; I have never found it in the dictionary; and I don't know of anybody else who ever did. I have never looked for it.

Q. Why did the Council consider, if the Council did so, that a hospital which couldn't keep a staff longer than six months was such a hospital as couldn't remain on its approved list as those or as one qualified to train internes?

A. Because it is necessary, to carry out any kind of a system of training, to have the continuity in planning and execution of any training program to have constant and regular supervision, and any hospital that wasn't in a position to undertake the responsibility of doing that we felt was incapable of properly carrying out such a program.

HON. PAT MCCARRAN, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I am Senator from Nevada. I identify a copy of an original letter received by me as a member of the Committee on Appropriations of the Senate from R. N. Elliott, Acting Comptroller General of the United States, dated December 16, 1937, as a correct copy, with exhibits lettered A to P, inclusive, as well as my letter of December 1, 1937, to Mr. Elliott (all of said documents being marked Def. Ex. 17). I identify a letter received dated September 22, 1937, from Howard Acton, Director of Public Relations, Federal Home Loan Bank Board (marked Def. Ex. 18). I identify a letter received by me from John H. Fahey of the Federal Home Loan Bank Board dated December 3, 1937 (marked Def. Ex. 19). I identify the report of H. R. 8837 made by Congressman Woodrum of the House Committee on Appropriations dated January 6, 1938. A copy of this report was furnished to each member of the Appropriations Committee of the Senate (Def. Ex. 20). I identify the transcript of the hearing before the subcommittee of the Committee on Appropriations of the Senate on H. R. 8837, as Def. Ex. 21.

THOMAS H. REAVIS, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I am employed in the General Accounting Office as investigator and have been there for 15 years. I produce, under subpoena to the Comptroller General, certain docu-

ments, being a certified copy of a letter from the Comptroller General dated December 16, 1937, to the Honorable Pat McCarran, United States Senator, together with the exhibit attached thereto, marked Def. Ex. 22.

Mr. Lewin: Before you start with this witness, I would like to make an offer. Your Honor, I think I neglected to offer formally in evidence the letters and documents which were read in connection with Dr. Cutter's cross-examination.

The Court: That is so, but they have been read to such an extent by counsel that of itself puts them in evidence. If you want the record to formally indicate the admission of such documents you may give the stenographer a list of them.

The defendants objected to these documents on the grounds they were incompetent, irrelevant, immaterial, that no conspiracy had been proven, hearsay, and too remote in time and place.

Objection overruled and exception noted.

(Gov. Exs. 619-656, inclusive, were received in Evidence.)

DR. C. M. PETERSON, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I reside at Palatine, Illinois. I am secretary of the Council on Industrial Health of the American Medical Association. From April, 1930, to February, 1938, I was on the staff of the Council of Medical Education and Hospitals. I graduated from the medical school of the University of Minnesota in 1927; engaged in the practice of medicine at the clinic in Duluth, Minnesota. I practiced medicine privately in London, Minnesota, and did postgraduate work at the New York Postgraduate College and Hospital. When with the Council I investigated the educational program in hospitals for 7 or 8 years and personally visited between 150 and 200 hospitals, covering the entire country. In each instance when I made an examination an application was first filed by the hospital with the Council requesting approval. On receipt of this request application forms

were sent out together with the essentials governing the various kinds of approval. Such pamphlets set out were the same as Def. Ex. 12 and 13. On February 3, 1937, I received at the Council a letter from Dr. James A. Cahill (Def. Ex. 16) requesting approvals of residencies in surgery at Georgetown University Hospital and Providence Hospital. I answered that letter, sending applications for these residency approvals to be submitted on behalf of Georgetown and Providence Hospitals. After receiving back the applications, as soon as other arrangements could be made pertaining to other applications all over the country, I came to Washington in the early summer of 1937, and visited Georgetown, Providence, Washington Sanitarium, George Washington, and Columbia Hospitals. I examined Columbia, the Washington Sanitarium, and George Washington Hospitals as routine reinspections at the same time I examined Georgetown and Providence. On coming to Washington I received no particular instructions and was left largely to my own initiative. Dr. Cutter, no member of the Council, nor any other person in the AMA gave me any instructions pertaining to these examinations. After completing my examinations of the hospitals, I made reports on all hospitals I visited, which was routine procedure. Copies of the reports were sent to each individual hospital. Def. Ex. 23 is my inspection report on Providence Hospital; Def. Ex. 25 is my report on Columbia Hospital; Def. Ex. 27 on Washington Sanitarium; Def. Ex. 24 on Georgetown University Hospital and Def. Ex. 26 on George Washington University Hospital. The original of each of these reports was submitted to the Council and a copy was sent to each hospital. The reports covered a review of the internships, the staff organization, clinical material, out patient department, medical records, medical library, pathological service, teaching plan, interne committee, general medicine, surgery, obstetrics, special instructions, staff coverage, and in so far as Georgetown is concerned, a fellowship in dermatology, fellowship in medicine, and a fellowship in radiology. The summaries to these reports were for purposes of bringing to the attention of the administrative staff of the hospitals the findings that are most prominent and which need to be brought to their attention most forcibly, in other words, the deficiencies needing correction.

I recite in my reports the deficiencies that needed to be corrected in certain of the hospitals inspected, and stated

that in the event the recommendations for corrections of deficiencies were not followed or pursued, generally speaking, they would not be given the approval sought. The general effect of nonobservance of matters brought out in the summary on the Council would be that the Council would withhold or withdraw approval. In my opinion if the recommendations I suggested were followed each hospital would be improved. At the time I made my inspections and reports I knew nothing of Group Health. When I made my examinations and inspections of the hospitals I heard nothing and discussed nothing with anyone about Group Health. I hadn't discussed Group Health with Dr. Cutter or with anyone else at all in any way, shape, or form, and Group Health never entered my mind in my inspection of the Washington hospitals, or in any of the recommendations which made up my reports. None of my correspondence subsequent to my reports has anything to do with Group Health.

The general plan was for the inspector to prepare a letter of transmittal for Dr. Cutter's signature. If other correspondence should be had following the letter of transmittal, ordinarily Dr. Cutter would conduct it. I should say that Dr. Cutter conducted the correspondence with the Washington hospitals. I dictated Gov. Ex. 239, dated August 21, 1937, to Providence Hospital. After I dictated it I sent it to Dr. Cutter for his signature. The custom with reference to initials on letters prepared for Dr. Cutter's signature is to place his initials followed by the stenographer's, and underneath to place mine, showing that I dictated the letter.

Q. Doctor, I want to draw your attention to this letter which you wrote to Providence Hospital. It encloses, as it states, a copy of your notes and recommendations, referring to opportunities available for internes at Providence Hospital, and you say:

"Please refer this statement to the officers of the staff and membership of the Executive Committee.

You will recognize that there are several factors that are not in conformity with the Council's regulations governing internship approval."

What were those factors? You say there are several factors not in conformity with the Council's regulations.

A. Those factors were the ones enumerated in the summary of the report.

Q. The ones that your attention has just been brought to?

A. Yes.

Q. And which you just explained to us?

A. Yes.

Q. (Reading):

"It is a matter of great interest to this office, therefore, to learn whether the recommendations enumerated at this end of the report are acceptable or not. As matters stand now we believe quite likely that when this statement is submitted to the Council at its regular meeting early in November interneship approval will be withdrawn."

To what were you referring as the basis of your belief when you dictated that letter, that interneship approval would be withdrawn from Providence?

A. Here, again, I referred to the recommendations contained in the summary of the report regarding conditions I found in Providence Hospital.

Q. Doctor, in that report you also made an analysis of the staff to which your attention was directed as I went over the report with you. Do you recall?

A. Yes.

Q. I will ask you whether or not the analysis of the membership of the staff had anything to do with the paragraph which you have just read?

A. No; it had nothing to do with that.

Q. To what, exclusively, did that paragraph refer when it said that interne approval would very probably be withdrawn?

A. To the statements in the summary regarding the matters that I found below par in respect to interne training.

Q. (Reading):

"Similarly the application for approval of a residency in surgery is held in abeyance pending adjustment of the present situation."

To what did you refer by the phrase "present situation"?

A. Those factors which I felt were still below the standard recommended by the Council regarding the training of a surgical resident.

Q. You called attention in the concluding paragraph of your letter to the Mundt Resolution, so-called, did you not?

A. Yes, sir.

Q. Why, Doctor, was the Mundt Resolution referred to in this particular letter?

A. We were calling the attention of all hospitals to the Mundt Resolution as we inspected them in relationship to our inspection program.

Q. What difference was there in your conduct when writing this particular letter to Providence Hospital and to other hospitals you inspected at the same time?

A. We followed this same procedure.

Q. With reference to all hospitals?

A. All hospitals approved for interneship and residencies.

I dictated the letters accompanying the transmittal of my reports to George Washington, Georgetown, Providence, Washington Sanitarium, and Columbia Hospitals. In calling the attention of these five hospitals I inspected to the Mundt Resolution no connection was had or intended concerning Group Health, as I hadn't even heard of Group Health at all when I wrote the letters.

Report on inspection of Providence Hospital, Def. Ex. 23; report on inspection of Georgetown University Hospital, Def. Ex. 24; report on inspection of Columbia Hospital, Def. Ex. 25; report on inspection of George Washington Hospital, Def. Ex. 26 and report on inspection of Washington Sanitarium and Hospital, Def. Ex. 27, were offered and received in evidence.

Def. Ex. 23, the report and inspection of Providence Hospital, was read from as typical of Def. Exs. 24, 25, 26, and 27, to jury, as follows:

"Providence Hospital ought to be in excellent position to provide high-grade internships. Like all hospitals with essentially a private clientele, there are difficulties in establishing an active and progressive teaching program. The following recommendations are made:

1. It is suggested that the details of appointment and supervision of interns be assigned to a separately organized intern committee which will report to the Executive Committee or to the whole staff, as seems more desirable. Such a committee should consider adopting the following activities:

a. Regular physical examination of interns at the outset of service including a flat plate of the chest.

b. Adoption of regulations which will require that each intern maintain a record of the work he performs subject to check by the residents and countersign by the chief of service. Advantages are that obvious deficiencies in experience can be corrected and the hospital authorities may recommend or promote on a merit basis.

c. Meeting should be held periodically with the interns to settle difficulties as they arise and to determine whether all interns are receiving a well balanced clinical training.

d. Development of additional teaching exercises would improve the internship considerably, such as:

1. Improved contact with clinical pathology and a controlled experience in that department and by the development of weekly clinical pathological conferences.

2. Development of a clinical society by the interns themselves where they may invite clinicians to discuss subjects the interns select themselves.

* * * * * * *

At present there is no tradition for good records in Providence Hospital.

* * * * * * *

Statistical reviews should be improved through recording by services the number of admissions, discharges, condition on discharge, infections, consultations, deaths, and autopsies. Where organized hospital services exist, it is usually preferable to submit service statistics at departmental conferences rather than before the entire staff.

* * * * * * *

The autopsy record is susceptible of great improvement. One hundred autopsies a year should not represent great difficulty. Coroner's autopsies are not considered as useful educationally unless it is possible for house officers to witness the procedures and suitable protocols are available for the hospital files."

It was on the basis of the recommendations contained in Def. Ex. 23 that I advised Providence Hospital (Gov. Ex. 239) that there were several factors not in conformity with

the Council's regulations governing internship approval, and, finding the hospital below par, I stated it was "quite likely that when this statement is submitted to the Council at its regular meeting early in November internship approval will be withdrawn," and "similarly the application for approval of a residency in surgery is held in abeyance pending adjustment of the present situation." Nothing in the reports or in the letters transmitting the reports to the hospitals had any connection at all with Group Health.

Cross-examination.

By Mr. Lewin:

As was customary in all reports, in my reports on the Washington hospitals I reported on staff memberships. This was not done pursuant to the Mundt Resolution.

Q. Do you know anything about this minute of the meeting of the Council on Medical Education and Hospitals held February 15, 1936, with regard to the resolution of the House of Delegates adopted at Cleveland? The Mundt Resolution was adopted at Cleveland, was it not?

A. I believe so.

Q. (Reading): "That physicians on the staffs of hospitals approved for interne training by the Council be limited to members in good standing of their local medical societies. It is suggested that in making reports on interne hospitals the Council's inspectors include an analysis of staff affiliations; that is to say, that they indicate which are fellows of the AMA, which are members and non-members. Such a report sent to the superintendent of the hospital would have a good effect."

Were you not familiar with that?

A. I believe I attended that meeting of the Council; yes.

Q. Would you say now that the reason you were required to report on the staff memberships when you inspected these hospitals was because of the Mundt Resolution?

A. Our principal approach to the staff analysis was in relation to the character of men who were to be responsible for the training of internes.

Q. Wait a moment. Did you go into the character of the individual members of the staff, or did you simply go into the question of whether or not they were members of your Society?

A. We obtained staff lists of the hospitals at the time we visited them and referred them to the list we had in our own office regarding their membership in the AMA.

Q. Did you study and report on the individual characters of the staff members?

A. The individual characters?

Q. Yes.

A. We took into consideration memberships in other societies as well, particularly special societies.

Q. Did you take into consideration the membership on the staffs of any of these five hospitals in societies other than the AMA? Will you look at those reports, please?

A. In connection with George Washington Hospital it appears that the staff, for example, is made up of the faculty of George Washington University Medical School, which would be a factor in its favor, as far as experience in teaching is concerned. I do not see any analysis of the staff here in this report. At Georgetown the analysis refers to membership and affiliation and non-membership in the American Medical Association.

Q. I did not ask you that. I asked you whether you analyzed the affiliations of staff members with other societies than the AMA and whether you reported on them.

A. Yes. I call attention to certain of the executive and visiting staffs being professors, associate professors, assistant professors in Georgetown Medical School.

At Columbia Hospital I call attention to the proposal for the development of eligibility to certification by the American Board of Obstetrics and Gynecology.

Q. What is that?

A. That is a certifying agency which, through a system of examinations, establishes the competency of a man in the specialty of obstetrics or gynecology.

Q. Is it in connection with the AMA?

A. Yes. They have representatives on the Examining Board from the appropriate section of the AMA.

Q. Is it confined to AMA members?

A. Membership in the AMA is one prerequisite for certification.

Q. I want to know what reports you made upon staff affiliations in societies other than the AMA.

Mr. Richardson: He has told you.

Mr. Lewin: He has told me about some professorship at local medical schools.

By Mr. Lewin:

Q. Have you not?

A. Yes.

Q. Is that all?

A. And the matter we have just discussed about special certification.

Mr. Leahy: Go ahead through the others, Doctor.

The Witness: In respect to Washington Sanitarium, the hospital itself had some specific rule regarding staff appointment which I do not recall at the moment; and in respect to Providence Hospital no other affiliation is mentioned, as I read this now, other than the American Medical Association.

By Mr. Lewin:

Q. You were interested, you say, in reporting on the membership or non-membership in the AMA because you were interested in the character of the men who were instructing the internes; is that right?

A. Yes.

Q. And you confined your study of their character to ascertaining whether or not they were members or non-members of the AMA. That is what that means, does it not?

A. If you will include that certain references are made to other affiliates.

Q. And those are the references that you have given, that some were professors in some of the medical schools?

A. Yes, sir.

Q. What is your testimony now, since I read you this minute of your Council, as to whether or not your purpose of studying and reporting on staff affiliations was connected with the Mundt Resolution and grew out of the Mundt Resolution?

A. I can say this speaks for itself.

Q. What does it speak? Are you in agreement with it? Did it grow out of the Mundt Resolution or didn't it? You testified to the contrary a moment ago. Does it speak correctly for itself?

A. This does not quote the resolution as such.

Q. Does it refer to the Mundt Resolution or not? It says "the resolution adopted at Cleveland with regard to staff membership."

A. I should say that it referred to the Mundt Resolution.

Q. Then your testimony would be that your practice in reporting on affiliations with the AMA directly grew out of the Mundt Resolution, would it not?

A. As regards this action, yes.

Q. As regards your action in making these reports, yes; is not that correct?

A. I thought you said that it grew out of this statement.

Q. I asked you whether your action in making these reports on the five Washington hospitals as to staff affiliations with the AMA did not grow directly out of the Mundt Resolution?

A. Yes.

J. FRANCIS MOORE, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I am employed by the Home Owners Loan Corporation as secretary to the Board, and have held such position since November, 1939. I identify the papers comprising Def. Exs. 48, 49, 50, 50A, and 57 as official records of the Home Owners Loan Corporation.

DR. CHARLES GORDON HEYD, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I reside in New York City and have been a practicing physician there since 1909, with an office at 116 East 53d Street. I received an A. B. degree from the University of Toronto in 1905, graduated from the University of Buffalo Medical School in 1909, served four years as an interne and medical resident at the New York Post-Graduate Hospital and Medical School, received my degree of Doctor of Sciences from Temple University, was professor of surgery in the medical school at Columbia and attending surgeon in the New York Post-Graduate Hospital. I was consulting surgeon, Women's Hospital, in New York; Dover Hospital in New Jersey; Greenwood Hospital in Connecticut and Rockaway Hospital in New York City.

I was president of the AMA in 1936 and 1937, and am a former vice-president of the American College of Surgeons. I served for 23 months in the service during the World War, 21 of which were with the A. E. F. equipping hospitals, and was commanding officer of Mobile Hospital No. 7. In November of 1937 I became a member of the Council on Medical Education and Hospitals of the AMA, which Council consists of seven members excluding the secretary, and have been since. The function of the Council is primarily to educate the people to improved medical service by the improvement in medical schools and the improvement of the quality of medical services in hospitals. The Council inspects medical schools and hospitals only when invited to do so, as it does not investigate a hospital unless requested by that hospital. About 800 to 1000 hospitals have been inspected on request. The AMA maintains three divisions of hospital registration. Hospitals that desire listing in the register of hospitals of the AMA, which is done without inspection; hospitals which seek inspection and approval for the training of internes, and hospitals which seek inspection and approval for the teaching and training of residents. The training of an interne is a basic thing in a general and broad preliminary way. A residency is a continuation of the training of an interne and may vary from two to four years. The inspection of medical schools by the Council embraces a survey of the physical plant, the equipment and laboratories, and an examination into the particular qualifications and ethics of teachers, and their affiliations, and a study of its library facilities. In other words, the Council by the effect of public education has reduced the number of medical schools from 161 to 66. The Council claims no jurisdiction over medical schools or hospitals and makes no effort to control the administration of either the medical schools or hospitals. The purpose of the Council is to keep good medical schools and hospitals going, to assist them, but only through education and the value of public opinion.

The Council exercises no control over the staff of a hospital, and the selection of staffs is in the board of trustees or directors, all as provided in the charters or licenses. In private hospitals in order to get on the staff a doctor makes an application, presents his credentials, and evidence of any special training he may have. He may obtain a position in the out-patient department, or clinic, and as his

experience and ability demonstrate, may progress and take care of a ward, and then, upon his merit, ability and service may, in the course of time, become a senior member of the staff. The tendency of hospitals in admitting doctors to their staffs is to ask such doctors to become members of their local medical society, as the hospital feels a man seeking the responsibility of an appointment on the medical staff must have the endorsement of his professional colleagues. He gets that by being a member of his local society, though there is hardly any hospital in which there are not doctors not members of local societies. A doctor who has not been accorded privileges to practice in a hospital has no right to practice in that hospital. The reason being that an M. D. degree and a license to practice in the state does not authorize a doctor to walk into a private hospital and take care of his patients. That would spell hospital and medical chaos. That couldn't be and isn't done. A doctor must affiliate himself with a hospital and, by proper training, get the right to operate in that hospital. The mere fact that a doctor is a member of his local society, of itself, does not warrant his being selected to the staff. In passing on applicants hospitals usually inquire into the ethics, character, standing, training, experience, natural aptitude, and competency of the doctor seeking privileges. Usually, in passing on the application for privileges, the doctor's whole professional life will be examined. The application will be referred to a committee on appointments of a medical board, and from there to the board of trustees for action. If his record is clear; if he is ethical and enjoys the due regard of his colleagues in the community, he probably will get the appointment. By being ethical is meant first that the doctor is a gentleman and follows the Golden Rule and the Ten Commandments. The American Medical Association has a code of ethics, and all doctors, regardless of whether they are members of the local society or not, have a code to follow, and take an oath to observe the Hippocratic oath, which is a condensed form of everything that is decent and right living in the conduct of man with his fellows.

I attended every meeting of the Council since November, 1937. I am familiar with the Mundt Resolution. That resolution has had very little effect on the deliberations of the Council. I am a strong believer in the Mundt Resolution and believe it is a step for the benefit of the com-

munity, although possibly a bit premature, as public opinion, hospital minds, and medical minds, are not prepared for it. Basically in the Mundt Resolution is implicit a benefit in medical services and hospital services for the community, because the whole progress of medicine has been based upon development in the medical society. A changing era is faced in medical practice, individuals are living longer and medical practice in future is going to be preventive medicine, and the source of graduate instruction, and the new things in medicine will come from the local medical society as the repository of new advances in medicine. It is the ideal of medicine and service to the community to have every doctor reeducated by contact with the center where medical knowledge originates and is dispersed, and that is implicit in the Mundt Resolution. The resolution expresses the policy of the House of Delegates that staff membership should be limited to members who are in good standing with local county medical societies, not the AMA. The Council has given a large measure of deliberation and debate to the resolution, and how to bring this ideal expectation before the medical profession. It instructed its secretary, Dr. Cutter, to send the resolution to the 6,000 registered hospitals. After that had been done the feeling, I think, was that we had accomplished the main purpose that was intended in giving a wide diffusion to a principle of the House of Delegates. When a hospital asks the Council to inspect it, after the inspection has been made and the report sent back, a copy of the Mundt Resolution is sent to that hospital for informative purposes, with the questions, "What is your reaction to this? Is it possible of attainment?" The Council has never taken the attitude that the Mundt Resolution should be used as a threat, and has never taken the attitude that before a hospital can be approved it must conform or adopt the principle of the Mundt Resolution. Hundreds of communications along the line of Def. Ex. 14 have been sent to various hospitals. In sending out the Mundt Resolution no threat was intended to any hospital. When a hospital seeks approval the Council believes they have the right to indicate under what circumstances that hospital will be approved, but at no time is there any coercion or any threat that if you don't have a staff of men who are all members of your medical society you will not be approved. That would be stupid and absurd.

The selection of a staff in an interne hospital is important because hospitals seeking approval are going to train the doctors who are going to take care of the people ten years hence. The Council prescribed the "Essentials of a Registered Hospital," Def. Ex. 11, and that lists a minimum that the institution should comply with before holding itself out as prepared to take care of the sick. In sending the "Essentials" and the Mundt Resolution to the hospitals the Council had in mind one purpose, and one purpose only, and that was the improvement of medical service to the better service of the community, and that is all. The economic status of a doctor and his position is of no moment whatsoever in that concept.

When I attended the first meeting of the Council in November, 1937, I had never heard of Group Health. Group Health was never discussed at any meetings of the Council. The actions of the Council with reference to hospitals seeking approval, and the Mundt Resolution, had no connection with Group Health. At no meeting of the Council did they seek to restrain Group Health or trade in the District of Columbia. In sending out the Mundt Resolution and the "Essentials of a Registered Hospital," no intention was had to interfere with the business of Group Health. No action taken by the Council since November, 1937, had anything to do with Group Health. A doctor may become a member of a local society if he has a license to practice, is of good moral character, and will subscribe to the code of ethics of the Medical Society. Ethics are important to the profession as they place a high standard for the individual and aid him in being a useful member of the society, a gentleman, honorable and upright. On becoming a member of a local society a doctor agrees to abide by a code of rules and ethics and is held accountable under that code and those rules for violations thereof. If a member is charged with violating the code of rules of the society charges are presented against him; he usually appears before a committee. If the decision is adverse he may appeal to the state medical society where the question is reviewed. If the decision in the state society is against him, he may appeal to the Judicial Council of the AMA. If the decision of the Judicial Council is against him he may appeal to the House of Delegates for a hearing. If the decision of the House of Delegates is against him he can appeal to the courts of the land for redress.

DR. CHRISTOPHER G. PARNALL, a witness for the defendants.

Direct examination.

By Mr. Leahy:

For over 16 years I have been administrator of the Rochester General Hospital in Rochester, New York. I graduated from the University of Michigan Medical School in 1904, and the academic school in 1902; practiced privately in Jackson, Michigan, for 12 years, and in the last three organized and was director of the Department of Public Health and Hospitals, was professor at the University of Michigan in administrative medicine and later director of the University Hospital. I am a consultant on hospital administration and am active in that capacity in various places. I am past president and trustee, also a member of the American Hospital Association. I am a former Commissioner of Public Welfare for the City of Rochester; a Fellow of the American College of Physicians, a member of the American Public Health Association, the American Medical Association, and the Monroe County Medical Society. The American Medical Association, representing organized medicine, has a distinct interest in the administration of hospitals because they exist primarily to enable the profession to render medical service to the citizens. A beneficial effect accrues to the hospitals throughout the country by reason of inspections and examinations by the AMA, and this is reflected in better coordination of medical work in the hospitals, better direction and supervision of the educational work of hospitals, particularly in relation to internes and resident physicians and directly affords better service to the patient. A hospital is examined by inspectors of the AMA occasionally or periodically to check on the work it is doing. My signature appears on Gov. Ex. 254. The signature on the original of the carbon dated December 1, 1936 (Gov. Ex. 246) doesn't correspond with the signature of Dr. Cutter as I know it. The letter in 1936 of September 8 referred to in Gov. Ex. 246 doesn't bear the signature of Dr. Cutter as I am familiar with it.

Mr. Lewin: May I ask a qualifying question? Have you ever seen Dr. Cutter sign his name?

The Witness: No.

Mr. Lewin: Have you any special knowledge of his handwriting?

The Witness: I am not a handwriting expert, but I am familiar with his signature because I have received various communications from him.

Mr. Lewin: Do you know which of these two is his signature and which is not?

The Witness: I don't think either one is.

Mr. Lewin: You don't think either one is?

The Court: They are in evidence?

Mr. Leahy: No, September 8th is not. I want to offer it now. That is why I have given it to him.

My attention was for the first time called to the Mundt Resolution in the letter of September 8, 1936 (Def. Ex. 28). Then the following question was asked:

"What effect did the Mundt Resolution have so far as you were concerned on the approval of your hospital?"

The Government objected on the ground that the witness's testimony should be confined to Washington and that the success of the restraint in Rochester is not in issue. The objection was sustained and exception noted.

Def. Ex. 28 was received in evidence and read to jury as follows:

Sept. 8, 1936.

"Dr. Christopher G. Parnall, Med. Dir., Rochester General Hospital, Rochester, New York.

"Dear Doctor Parnall:

We are pleased to submit a copy of Dr. F. H. Arestad's report of the present status of intern training at Rochester General Hospital. Similar documents have been sent you in the past and we hope this will prove a useful addition to your files. Will you kindly refer this statement to Dr. Prince and his committee as well as other staff members interested in these matters.

It is very pleasant to know that training of house officers continues on the same high level noted formerly and that approval of these positions by the Council is amply merited. It will be our purpose, therefore, to continue to publish in our lists that Rochester General Hospital is approved

for intern training and for residencies in surgery and medicine.

Special approval for mixed residencies is no longer necessary, in accordance with the Council's policy of assigning full credit for such services in any hospital previously approved for the general internship.

May we call your attention to a recent resolution passed by the House of Delegates of the American Medical Association:

Resolved, That it is the opinion of the House of Delegates of the American Medical Association that physicians on the staffs of hospitals approved for intern training by the Council on Medical Education and Hospitals should be limited to members in good standing of their local county medical societies and that the House of Delegates requests the Council on Medical Education and Hospitals to take this matter under advisement.

What possibility, if any exists for observance of the principle laid down in this resolution?

Very truly yours, Wm. D. Cutter."

I don't think I replied to Def. Ex. 28 before I received Gov. Ex. 246 on December 1, 1936. I replied to the request for comments on the Mundt Resolution in Gov. Ex. 246 by sending Gov. Ex. 254 to Dr. Cutter. Gov. Ex. 254 was read as follows:

Dec. 17, 1936.

"Dr. William D. Cutter, Secretary,
American Medical Association,
535 North Dearborn Street,
Chicago, Illinois.

DEAR DR. CUTTER:

Relative to the resolution of the House of Delegates favoring a rule by the Council on Medical Education and Hospitals limiting membership on a hospital staff to members in good standing of local county societies; I am in somewhat of a quandary as to just what to say. Personally I feel that members of hospital staffs should be members of their local county societies. However, I do not believe in any inflexible rule setting up such a standard of eligibility.

I suggested to our Board of Directors a change in the By-Laws relating to staff appointments, requiring that un-

less otherwise voted by the Medical Board, no physician would be eligible to the Visiting and Associate positions of the staff unless he is a member in good standing of the county medical society. When this proposal was referred to the Medical Board for an opinion, I was rather surprised to find that its members—all members of the county medical society—were unanimously against it. Their feeling was that the county medical society should stand on its own merits and that it should offer enough of itself so that practically every member of a hospital staff would seek membership, and that everything that savored of compulsion would subject Medicine to the same thing that arouses the resentment of doctors to the actions and attitudes of non-medical organizations.

It was pointed out that only a small percentage of the staff were not members of the county society and that most of this group were younger men, most of whom will shortly join the county society. I am sending you a list of our staff appointments for the hospital year 1935-36, with the non-members checked. You will note that allowing for duplications, excluding the Honorary and Consulting divisions, there are 128 members, 118 of whom are members of the county society, leaving 10, or 8%, who are not. Even on the Honorary inactive staff of seven members, all but one being over 75 years of age, there is only one who is not a member of the county society. Of the 22 on the Consulting Staff, the only two who are not members of the county society are the Professor of Bacteriology at the University and a bacteriologist who is not an M. D. Our Staff represents practically one-fourth of the active membership of the county society. On its membership are the President of the New York State Medical Society; the President, the President-Elect and the Secretary of the Medical Society of the County of Monroe.

I personally have been a member of the American Medical Association continuously for over thirty years and two of my sons are members of county societies.

Under the circumstances, as far as support of organized medicine is concerned, could the House of Delegates very well hold that the Rochester General is an unfit place for the training of interns?

With warmest personal regards and wishes for a Merry Christmas and a successful New Year, I am,

Sincerely yours, C. G. Parnall."

Following this I received Gov. Ex. 255. No action was taken by the Council on Medical Education and Hospitals of the AMA other than Gov. Ex. 255, following my letter to them stating that all of the members of our hospital staff were not members of the local medical society. Nothing further was said about approval of our hospital by the Council. I received no further communication with reference to approval of our hospital. Our rejection as noted in Gov. Ex. 254 had no effect whatsoever upon the approval of our hospital as a suitable hospital for training internes.

Q. As President of the American Hospital Association, and as a consultant in the American Hospital Association, have you ever heard of approval for interne training of any hospital in the United States depend upon either the rejection or the adoption of the Mundt Resolution, or the principle contained therein?

Mr. Lewin: Just a minute that is the same question.

The Court: Objection sustained. I think that would broaden the field. It opens up a collateral issue. If I permitted that, it would, perhaps, bring in every hospital in the country.

Mr. Leahy: We don't wish to do that, your Honor.

Objection sustained and exception allowed.

Gov. Ex. 255 was read to the jury as follows:

"December 21st, 1936.

Dr. C. G. Parnall,
Medical Director,
Rochester General Hospital,
Rochester, New York.

My dear Dr. Parnall:

In response to your letter of December 17th, let me express my appreciation of your information and your comment on the affiliation of your staff members with your medical society.

The intention behind the resolution referred to was to smoke out from the staff of some hospitals certain men who were regarded as objectionable but whom the hospital felt a delicacy in removing.

I notice in the figures which you have kindly supplied, that your staff enjoys a very fortunate position with regard

to the support of your professional organization and that apparently any object which the Council might have had in view has already been anticipated.

Cordially yours,"

There is operating at Binghamton, a hundred miles from Rochester, a plan of the Endicott-Johnson Company; there is a prepayment plan recently started under the auspices of the Erie County Medical Society, operating in Buffalo County; there is also some bakery plan operating. Also the Agfa plan, involving group practice and prepayment, and all of these prepayment plans are served by members of the American Medical Association and members of the local medical societies.

Cross-examination.

By Mr. Kelleher:

The Erie County Medical Society plan is connected with a group hospitalization plan and includes everybody in the medical society, and the doctors are paid fees. The Agfa plan is sponsored by a group with the approval of the medical society. I am not familiar with the plans and cannot give details.

I received the original of Gov. Ex. 255. It is my impression that it bears Dr. Cutter's signature.

Redirect examination.

Under the plan in force under the supervision of the Erie County Medical Society the members paid in advance by monthly payroll deductions.

Recross-examination.

Where members participate in this plan and pay monthly dues, that is ethical. Where there is an arrangement for deduction of dues from their salaries, it is considered ethical.

Redirect examination.

The only question involved in any plan, on the ground of the ethical character of the plan, is whether or not it can deliver a good quality of medicine in the public interest.

DR. WILLIAM C. WOODWARD, a defendant and a witness for the defendants.

Direct examination.

By Mr. Leahy:

I now reside in Washington. Prior to January, 1940, I resided in Chicago for 17 years. I am a native of Washington, D. C., and was born here in 1867. I graduated from Washington High School in 1885, obtained a medical degree from Georgetown University in 1889, obtained a law degree from Georgetown University in 1899, and an LL.M. in 1900. I am a member of the Bar of the District Court of the United States for the District of Columbia, the Supreme Court of the United States, the State of Massachusetts, and the State of Illinois; I have an honorary degree of LL.D. from Georgetown University, 1925. I was Coroner of the District of Columbia in 1893 and 1894 and health officer for the District from 1894 until 1918. I was secretary to the medical supervisors, the examining and licensing board for the District for ten years. I was in charge of public health for the Public Health Service here in Washington for 25 years, as health officer. I was Health Commissioner for the city of Boston from 1918 to 1922, exercising legislative as well as executive powers. In 1922 I became Director of the Bureau of Legal Medicine and Legislation of the AMA, resigning that office in December, 1939, when I retired. I taught medical jurisprudence in the law and medical schools of Georgetown University; the medical school of George Washington University; the medical school of Howard University; the medical and law schools of Loyola University. I was professor of medical jurisprudence in both the medical and law schools of the University of Chicago. I am a Fellow and ex-president of the American Public Health Association, an ex-president and honorary life member of the Conference of State and Territorial Health Authorities and Boards of Health, a member of the Medical Society of the District of Columbia, an honorary member of the American Veterinarian Medical Society, a member of the International Association of Milk Sanitariums, and a member of the Royal Society of Public Health and Hygiene of London.

In 1922, under the authority of the resolution of the House of Delegates, I organized the Bureau of Legal Medicine and

Legislation and was its first head. The bureau has charge of matters of legislation and legal medicine of general interest to the profession. I kept informed as to the various organizations in those fields, co dinated public opinion and the opinion of the medical profession and generally as the resolution says, represented the AMA. The bureau analyzed all cases reported in the national reporter system of Medical-Legal interest, and analyses were published from time to time. Information concerning matters of medical-legal interest was furnished the profession. Legislation was advocated to correct existing evils.

Group Health was first called to my attention in the Verbrycke letter of May 29, 1937 (Gov. Ex. 441-A). I received a copy of the Ireland letter of March, 1937 (Gov. Ex. 295), which I filed and took no action thereon. After receiving the Verbrycke letter, and after talking with Dr. West about it, I decided to come to Washington to ascertain the facts.

Q. What was there, Doctor, in the letter of May 29, 1937, from Dr. Verbrycke, U. S. Exhibit 441-A, which was so different from the letter of General Ireland which we have just mentioned, that caused you to think that you should come to Washington to make an investigation?

A. Dr. Verbrycke's letter represented the situation, frankly, as one of national interest, and the view of the organization, particularly the Bureau of Legal Medicine, was that with respect to matters of national interest the American Medical Association should take the initiative. With respect to state matters, or a case in the District of Columbia, we allowed the state or District organization to take the initiative and we cooperated and advised.

Q. The letter of May 29, 1937, from Dr. Verbrycke to Dr. Woodward reads as follows (reading Gov. Ex. 441-A):

"I am writing this semi-officially as chairman of the Economic Committee of the District of Columbia Medical Society to you as chairman of the Legislative Council of the AMA. We are faced with a new problem which would seem to be more far-reaching than a purely local difficulty. Our immediate concern is local, but two factors make it a national concern.

The Home Owners Loan Corporation has organized a cooperative undertaking called Group Health Association, Inc. They propose to have their own set-up for medical care of themselves and families with full time personnel, and

Dr. Brown, formerly of the Veterans Bureau, has been appointed Medical Director with a reputed salary of $8,000. He is at the present time trying to organize a staff. The Home Owners Loan Corporation has about two thousand employees here and a number of regional offices through the country. This is not a great deal in itself, but we are informed that this undertaking is financed by a government loan."

The words "this undertaking is financed by a government loan" are underscored. (Continuing reading):

"That the President has given his approbation and is so interested in it that if successful he plans to recommend similar organizations through all departments.

"You, knowing conditions in Washington, will realize that if this movement should spread to the ultimate, the private practice of medicine would be practically destroyed, and it is conceivable that the experiment started here would spread through the entire country, as it is entirely in line with what the President is said to want. We feel that two of the factors mentioned above bring this problem directly to the door of the AMA. I am asking if you will not come here to confer with us and advise us as to best methods of approach. Coming as close to the meeting at Atlantic City it seems as if the present were a very opportune time.

"With kindest regards, I am,

Sincerely yours,"

Late in May I came to Washington to attend to other matters, and on arrival had a conversation with Dr. Verbrycke. I learned that Group Health was supposed to be based on an examination into health conditions among employees of HOLC. Accordingly, I first went to the United States Public Health Service, but they knew nothing whatever of any such investigation. Then I went to the United States Employees' Compensation Commission and was informed by the secretary that they had heard of no such investigation. Then I went to the offices of HOLC and learned that HOLC was not making loans to health service corporations. After seeing several persons there I attempted to see one of the Governors of the Board, but was told he was in conference, and was referred to Mr. Zimmerman, to whose office I went. There I identified myself as a representative of the AMA eager to obtain information on Group Health for the purpose of discussing it at the meet-

ing of the AMA at Atlantic City. I had previously learned, accidentally, that there was a contract of some sort between HOLC and Group Health, so I asked to see a copy of the contract. Whereupon Mr. Zimmerman said he would have to get legal advice, or consult counsel. Mr. Zimmerman then went out, returned, and advised me that he had been instructed by counsel not to show a copy of the contract to me, but that Dr. Brown would have it at Atlantic City. At Atlantic City I didn't see Dr. Brown and was unable to obtain a copy of the contract. On my return I tried but was unable to see Mr. Zimmerman. About two weeks later I obtained a copy of the articles of incorporation of Group Health Association from the Recorder of Deeds in Washington at my request or through our representative in Washington, John H. Hayes. I carried on a general investigation, was back and forth between Chicago and Washington, met several representatives of the Medical Society, attended one committee meeting with Dr. Leland in July, 1937, and one meeting of the Society, for the purpose of ascertaining what I could concerning Group Health and its relation to the Government. I was particularly disturbed by the articles of incorporation as I found them, and was eager to learn just how rapidly GHA was developing and how it was developing either here or elsewhere. The articles of incorporation disturbed me because they covered all officers and employees of the United States Government everywhere in all branches of the Government, except commissioned officers and enlisted men in the Army and Navy, indicating that the organization was a national organization of large scope. During June, July, August and September I endeavored to assemble reliable information regarding Group Health for the purpose of reporting it to the board of trustees of the AMA.

Q. Was that in pursuance of any policy of the American Medical Association with reference to collecting data or information?

A. It is a part of the duties of the Bureau of Legal Medicine and Legislation and is defined in the resolution under which it was created.

Q. Do your recall how much information you were able to get from any source during the period of the summer of 1937, with reference to GHA?

A. I got, of course, information regarding the articles of incorporation, and from time to time word came as to

the set-up, it may be, but I could get no specific information except as I got hold of a copy of the constitution and by-laws and a copy of a blank application for membership and a few things of that sort, all of which forms the basis of a report that I made.

Efforts were made to obtain a copy of the contract between HOLC and Group Health Association through various Congressmen, but they failed.

I wrote Gov. Ex. 198. (Defense counsel read Gov. Ex. 198 to the jury.) I received Gov. Ex. 199 in reply. (Defense counsel read Gov. Ex. 199 to the jury.) I had no information with reference to the meeting of the District Medical Society on June 30th other than that contained in these two letters. "Let me suggest that Mr. Hayes attended that meeting and made a report, possibly: I am not sure. If so, the letter is in the record." I received and read Gov. Ex. 180. (Defense counsel read Gov. Ex. 180 to the jury.) The meeting of July 14, 1937, referred to in this letter was a meeting of one of the committees of the District Medical Society that Dr. Leland and I attended. I supplied the District Medical Society with a copy of the articles of incorporation of Group Health, as they requested.

I obtained a preliminary announcement headed "Private and for Confidential Circulation only" from Dr. Verbrycke on my visit in the latter part of May, 1937. I received Gov. Ex. 45 at my residence in Chicago and it was addressed so as to lead me to believe that it was sent to me as an associate member of the District Medical Society and not to me in my official capacity as an officer of the AMA. (Defense counsel read Gov. Ex. 45 to the jury.) I took this letter to the office and left it there as a part of the office records, thinking it might be of interest in regard to our inquiries relative to Group Health.

I wrote Gov. Ex. 187. (Defense counsel read Gov. Ex. 187 to the jury.) I met Dr. McGovern frequently during my visit to Washington during that period. On my frequent visits sometimes I would meet him on one occasion; sometimes more often. I received Gov. Ex. 188 in reply to my letter (Gov. Ex. 187). (Defense counsel read Gov. Ex. 188 to the jury.) The Bureau of Legal Medicine and Legislation did not express any wish or hope to be represented at any of the meetings of the Executive Committee

of the District Medical Society. I don't recall having conferred with Dr. Cutter with reference to the letters just read.

Dr. Leland and I again came to Washington in November of 1937 to attend a meeting of the District Medical Society with reference to Group Health. I wrote Gov. Ex. 202. (Defense counsel read Gov. Ex. 202 to the jury.) During this period I was assembling information for the purpose of writing my report to the Board of Trustees. I advised the District Medical Society to procure counsel and be guided by the advice of counsel.

I wrote Gov. Ex. 190. (Defense counsel read Gov. Ex. 190 to the jury.) I received a reply. Up to the time of this letter I had received practically no information concerning Group Health except I had gotten what purported to be a copy of the constitution and by-laws of the corporation. I received Gov. Ex. 84 in response to Gov. Ex. 190. (Defense counsel read Gov. Ex. 84 to the jury.) I had no correspondence directly with the subcommittee of the Executive Committee or any member of it.

I did not do anything "in an effort to formulate a suitable and effective policy with respect to combatting the activity of Group Health Association" nor to my knowledge did the AMA. The Board of Trustees meeting was held on September 15, 16 and 17, 1937. At the time of this meeting the information concerning Group Health which I had was rather extensive and had been embodied in a report I had submitted under date of September 1. The pamphlet marked "Private—for Confidential Circulation only" (an attachment to Gov. Ex. 609) I got from Dr. Verbrycke at the time of my visit to him. I had not received a copy of the contract for which I was searching up to the date of the last letter read.

The report to the Board of Trustees which I made under date of September 1, was, after severe editorial cutting, published in the Journal of the AMA on October 2, 1937. Gov. Ex. 294 is a draft of the original report, with the addition of one page on September 7, and various additions and deletions. I received Gov. Ex. 111 which was referred by Dr. West to me. (Defense counsel read Gov. Ex. 111 to the jury.) Gov. Ex. 293 is a copy of the Journal article. This is the official journal of the AMA. The AMA also publishes nine or ten other journals.

Gov. Ex. 284 was written by Dr. Fishbein and sent to me. Defense counsel read Gov. Ex. 284 to the jury as follows:

"September 13, 1937

"DR. WOODWARD:

I am returning herewith the duplicates of the report on the HOLC. The original is being edited for use in the Organization Section of the Journal."

I received Gov. Ex. 186. Mr. Hayes had been for many years the Washington correspondent representing the Association generally, picking up news and matters of that sort, to forward to the Association. Since for some years past he has been connected directly with the Bureau of Legal Medicine and Legislation for the purpose of procuring for us essential data that we need in Washington, I asked him to collect information for me. (Defense counsel read Gov. Ex. 186 to the jury.) I received Gov. Ex. 182. I did not formally communicate the contents of these letters from Mr. Hayes to Drs. West, Fishbein, Cutter and Leland. If I communicated the contents at all, it came about in the case of contacts that I would make with them throughout the day. If there was any matter of importance that had to be—policy that had to be determined, I would confer with Dr. West, but generally there was nothing calling for conferences of that sort. (Defense counsel read Gov. Ex. 182 to the jury.) I received Gov. Ex. 183. Defense counsel read Gov. Ex. 183 to the jury as follows:

"August 25, 1937

"Dr. Woodward, Chicago.

"DEAR DR. WOODWARD:

"Following the transmittal of my letter to you of yesterday on the Group Health Association, Inc., I awoke this morning to read in the Washington papers the enclosed articles from the Herald and Post.

"Thereupon I called at the office of Mr. W. F. Penniman, Assistant General Manager for District No. 6, of the Home Owners' Loan Corporation. He was absent from his office from 2 p. m. until 4:30 p. m. but I did see him at the latter hour.

"I referred to the statements in the papers and asked him if these statements were correct. He stated that

they did not come from him and he did not know whence they did come, and that they were not correct. He did not care to amplify or be specific on any statement of facts —other than to say that 'we are in the embryonic stage and our plans are not fully worked out.'

"During my long wait in his office to see him, I asked the young lady in the outer office if she could supply me with one of the blanks used by employees of the Home Owners' Loan Corporation in applying for membership in the Group Health Association, and she replied that she had filled out her application but that she did not have another. I asked Penniman if he could supply one of these blanks to me, and his reply was that 'he did not have any of the blanks.' I will try other sources tomorrow, and will send blank to you if one can be secured.

"To my request for a list of the members of the medical staff, he replied that 'that the list was not yet ready'.

"I talked later to Mr. Howard Acton, in charge of Press Relations for the Home Owners' Loan, and suggested that something official ought to be prepared at once to supply newsmen instead of articles such as appeared today in Washington papers, which apparently are not prepared with official approval.

"It may be advisable for you to delay publication of your article until these fellows are compelled to come out in the open and let the world know definitely what they are doing.

Very truly yours,

John F. Hayes."

I wrote Gov. Ex. 184. Defense counsel read Gov. Ex. 184 to the jury as follows:

"DEAR MR. HAYES:

I thank you very much for your letter of August 25 relative to Group Health Association, Incorporated.

I am not sure but that the situation described in your letter calls for an earlier publication by the American Medical Association concerning Group Health Association, Incorporated, rather than a later one—that is, if those who control our publication machinery deem it wise to publish anything.

I enclose herewith a draft of the article that I prepared with a view to publication. I have not yet prepared a closing section. You can see, I believe that I have very well anticipated everything that is going on in Washington in connection with this matter, even to Filene's part in the matter, in some cases having the facts before me and in other cases drawing deductions from these facts. Was not Fahey a labor lawyer in Boston before he assumed his present position in Washington?

Will you not examine this draft and return it to me at the earliest possible moment with any comments and criticisms you see fit to make? Please regard it as confidential.

Yours truly,"

Mr. Fahey is chairman of the Board of Governors of the HOLC. Edward A. Filene was a retired department store owner in Boston and the founder of the Twentieth Century Fund and was its president at that time.

I wrote Gov. Ex. 185. It is dated August 30th and I sent it to Mr. Hayes. Gov. Ex. 185 was read to the jury as follows:

"DEAR MR. HAYES:

I am informed that although Twentieth Century Fund, Inc., of which Mr. Edward A. Filene is President, was interested in the organization of the cooperative medical service in Washington out of which Group Health Association, Inc., grew, the Fund subsequently withdrew its support. The group that was promoting the Group Health Association, Inc., is said to have been so radical in its ideas and so unbusinesslike in the conduct of its affairs that Twentieth Century Fund, Inc., would have none of it.

"Dr. Fishbein suggests that if we could have some lay person from Washington not identified in any way with the American Medical Association write to Mr. Filene about the matter, he might get something of interest; not to write about the withdrawal of the Twentieth Century Fund but to write for information concerning the present movement, for instance:

"DEAR MR. FILENE:

"The local press in Washington has recently published articles about a cooperative medical service organized here

in Washington referred to as Cooperative Health Association, Inc. In one of the articles, it was stated:

'The Twentieth Century Fund of New York, backed by Edward A. Filene, Boston merchant, philanthropist, also is aiding the corporation, chartered under the District of Columbia laws.'"

"I am therefore turning to you for information concerning the practicability and value of Group Health Association, Inc. Obviously, inquiry of the government officials who are responsible for the organization can lead only to laudatory answers, for unless they thoroughly believe in the plan they can certinly not have undertaken to underwrite it up to $100,000. Moreover, these men, as I understand it, are all novices in this field and Twentieth Century Fund, Inc., is not. Twentieth Century Fund, Inc., and you as its President, are however, I assume, in positions from which the plan can be viewed with unbiased minds and you will naturally keep yourselves informed concerning the activities of the organization in view of the support you have given it—if you have given it the support the newspapers say you have. I shall appreciate it very much if you let me have your frank opinion regarding the expediency of a person of limited means identifying himself with this organization. What is the likelihood of its defaulting in its obligations? What can one expect of it in the way of competent medical and hospital services? Etc.?

"Of course, Mr. Hayes, the foregoing is only a suggestion. You may have no one whom you could ask to write such a letter to Mr. Filene. If so, do not hesitate to say so. You may be able to frame a much better letter than I have suggested. What I have written is intended only to give a definite idea as to the line of thought that seemed to run through Dr. Fishbein's mind.

"Incidentally, Dr. Fishbein thought that he could not run my article on Group Health Association, Inc., until next week, so you will not see it in the Journal for September 4.

"Yours truly, "Director."

I received Gov. Ex. 203. (Defense counsel read Gov. Ex. 203 to the jury.) I saw Gov. Ex. 103. The text is very familiar to me. It was written by Dr. West. Defense counsel read Gov. Ex. 103 to the jury as follows:

"June 23, 1937.

"Mr. Thomas A. Hendricks
Executive Secretary
Indiana State Medical Association
Home-Mansur Building,
Indianapolis, Indiana.

"DEAR MR. HENDRICKS:

"I am very greatly obliged to you for your letter of June 22, for the memorandum attached to it and for the copy of (quote) 'A Plan for a Cooperative Medical Service on a Periodic Payment Basis for Federal Employees and Their Families in Washington.' (Close quote.)

"While we already had a copy of this 'plan' and practically all of the information submitted in the memorandum attached to your letter, we are nevertheless grateful to you for sending us the material that accompanied your letter and especially for the information pertaining to the small group in Washington that seems to be acting as a steering committee for the organization of cooperative medical services among various governmental departments. We had not been able to secure this particular piece of information.

"We have known for two or three months that a movement has been started to organize medical service plans for governmental employees. We have made very diligent efforts to ascertain all the facts and we are still persisting in those efforts.

"Since the Atlantic City Session Doctor Woodward has been in Washington for a large part of the time and has had interviews with officials of the HOLC, the Resettlement Administration, the Brookings Institute and numerous others. The one thing that we have tried very hard to secure is a copy of the contract to be entered into between the cooperative and their members. Our own efforts as well as the efforts of persons in high official position in Washington have been altogether unavailing and we have not been able to secure a copy of the contract nor any specific information about its provisions.

If you can succeed in securing any additional information, we shall appreciate it if you will pass it on to us just as we have fully appreciated your helpfulness in connection with other matters in the past.

"Very sincerely yours,"

Gov. Ex. 106 came to my attention. It is dated June 25, 1937, and is on the letterhead of Dr. Herbst. (Defense counsel read Gov. Ex. 106 to the jury.) I never got in touch with Dr. Herbst and never discussed GHA or HOLC with him.

I saw Gov. Ex. 105 which is a letter dated June 28, 1937, and written by Dr. West to Dr. Herbst in Washington. Defense counsel read Gov. Ex. 105 to the jury as follows:

"DEAR DOCTOR HERBST:

I am greatly obliged to you for your letter of June 25. We have been considerably perturbed over the scheme that is being promoted under the auspices of the Home Owners' Loan Corporation and have made very earnest efforts to develop dependable information through authentic sources. While we have secured some very interesting information, we have no been able to secure other information of an absolutely essential character. The way in which this matter has been promoted in Washington is rather typical. We are grateful indeed to you for the information offered in your letter. I shall hope to see you when you are in Chicago.

With most cordial good wishes, I am,

Very truly yours,"

I don't know whether I ever saw Gov. Ex. 115 which is a telegram from Dr. West to Dr. Hooe dated November 4, 1937. (Defense counsel read Gov. Ex. 115 to the jury.) The District Medical Society or one of its committees authorized Dr. Hooe and Dr. McGovern to come to Chicago to confer with representatives of the AMA concerning GHA. Gov. Ex. 116 is addressed to Dr. West and states: "Will arrive in Chicago 8:20 A. M. November 6. R. Arthur Hooe." I was present at this conference. Also present were Dr. West, Dr. Leland and Miss Niehoff.

I wrote Gov. Ex. 179. (Defense counsel read Gov. Ex. 179 to the jury.) I wrote Gov. Ex. 201 to Dr. McGovern. (Defense counsel read Gov. Ex. 201 to the jury.) Gov. Ex. 117 is the report of the conference held on November 6 in Chicago. I wrote Gov. Ex. 191 on December 3, 1937, to Dr. Thomas E. Neill. Defense counsel read Gov. Ex. 191 to the jury as follows:

"I understand that counsel for the Medical Society filed with the District Attorney and Corporation Counsel sev-

eral days ago its brief concerning the status of Group Health Association, Inc., and its relation to the Home Owners Loan Corporation and affiliates. I had rather expected that I would receive a copy of that brief, but none has yet arrived. Is there any reason why a copy should not be sent to me? If a copy of the brief can be sent to me, please have it sent as promptly as possible and let me know at the same time whether or not I am at liberty to print it or to discuss it publicly in the Journal or elsewhere. If I am not at liberty to do so immediately, please see that I am informed as soon as the brief is released to the public. If it is possible to get for me a copy of the brief filed by the Home Owners Loan Corporation and affiliates on behalf of its illegitimate child I would like to have a copy of that brief also, together with instructions as to publicity and release."

I received Gov. Ex. 192 from Dr. Neill. Defense Counsel read Gov. Ex. 192 to the jury as follows:

December 6, 1937.

"My Dear Dr. Woodward:

Your letter of December 3 has been received, and I have just talked to the counsel for the Medical Society who tells me that he thinks he can have copies of the briefs for you, the one drawn by counsel for the Medical Society of the District of Columbia and the one drawn by counsel for the Home Owners Loan Corporation. As soon as he hands them to me I will have them sent you immediately.

Our Executive Committee, together with general counsel and others appointed by me to work with him, meet tonight with two members in question to decide whether or not we will dismiss them from the Medical Society of the District of Columbia for violation of our constitution and by-laws. I will also bring up at the meeting the subject of whether or not there is any reason that you should not be at liberty to print and discuss the briefs publicly in the Journal or elsewhere.

With best wishes."

I wrote Gov. Ex. 196. (Defense counsel read Gov. Ex. 196 to the jury.) I received Gov. Ex. 197 in reply to Gov. Ex. 196. (Defense counsel read Gov. Ex. 197 to the jury.) I wrote Gov. Ex. 204. (Defense counsel read Gov. Ex. 204

to the jury.) I wrote to the state societies in Maryland and Virginia and called their attention to the situation and suggested there was something for them to do.

I dictated Gov. Ex. 200. This was a report to Dr. West on the results of Dr. Leland's and my visit to Washington to confer with a committee of the District Medical Society relative to Group Health. This refers more accurately to data that had been accumulated up to that time rather than a result of the conference. I assume it was the result of the conference but I see no definite reference to the conference. It tells everything I knew about Group Health at the time I wrote it. (Defense counsel read Gov. Ex. 200 to the jury.)

Page 18 of Gov. Ex. 135 came to my attention. Defense counsel read from Gov. Ex. 135 to the jury as follows:

June 29, 1937.

"Dr. Bloss moved that the editor and the secretary and general manager be authorized to proceed to inform the profession of the country as to the efforts of the H.O.L.C. to enter into the practice of medicine and as to the present status of the proposal to organize cooperatives by the Government. Dr. Hayden seconded the motion and it was carried.

Dr. Hayden moved, and the motion was seconded by Dr. Bloss and carried, that Drs. Woodward and Leland be requested to go to Washington to see what they can learn and to try to advise the Medical Society of the District of Columbia if that society is willing to accept advice."

My writing of the Journal article had to do with motion of Dr. Bloss.

Q. What purpose had you in writing the article which appeared on October 2, 1937, in the Journal?

A. The editor and the secretary and general manager were called on to inform the profession generally of what the situation was, and I wrote a factual article for their guidance in preparing any article that they might publish if they decided to publish anything. I had the facts and they did not. I was giving them the facts in an available form.

Q. You have told us several times that you and Dr. Leland were here on the 14th day of July, 1937. What connection, if any, did your trip to Washington and your meet-

ing with a committee of the District of Columbia Medical Society on July 14, 1937, have with the second motion, to wit, that of Dr. Hayden, seconded by Dr. Bloss?

A. My recollection is that the report to Dr. West that has just been read showed the results of that visit to Washington by Dr. Leland and me.

Q. Was it in accordance with the motion which I have just read to you, of Dr. Hayden, seconded by Bloss, that you come here to the District of Columbia to meet with that committee?

A. It was.

The following portion of Gov. Ex. 135 also came to my attention. Defense counsel read from Gov. Ex. 135 as follows:

"Home Owners Loan Corporation, Group Health Association, Inc., Group Medical Service Plan.

"The following paragraph from a communication which Dr. West received from a physician in Washington, D. C. was read:

" 'The Group Health Service affair of the Home Owners Loan Corporation has already been incorporated, and our Executive Committee had a meeting with some of their representatives last night, and it certainly looks bad. It was brought out that it is possible for them to borrow money from the Home Owners Loan Corporation whenever necessary at any time for any purpose in regard to the Health problem. It was also brought out that there are about 200 branches scattered throughout the United States which maintain emergency rooms with a nurse which are directly under the central office here in Washington. Just what is going to come out of the whole affair is impossible to predict at this time, but there are going to be some conferences in an attempt to go along with this outfit if it is possible to do so and retain our faces.'

"Dr. Woodward reported information secured from a Washington physician over the telephone and by letter concerning this matter and there was considerable discussion as to what the action of the American Medical Association should be concerning the activities of the HOLC and also concerning the proposal of the Medical Society of the District of Columbia to organize its own cooperatives.

"After the discussion the following actions were taken:"—

And then follow the two motions which I have already read to the jury.

I do not recall the meeting of the Board at all, but only its outcome in so far as it related to the bureau of which I had direction.

I wrote Gov. Ex. 177 as I had called on Dr. Verbrycke for a conference with respect to the situation in Washington in relation to Group Health.

Q. And how did you happen to make the memorandum, Doctor?

A. The memorandum involved a radical change in the policies of the Medical Society of the District of Columbia, and of the American Medical Association of such importance that I thought it desirable to have a record of the conference.

Q. Did you personally write up the memorandum yourself?

A. I did.

(Defense counsel read Gov. Ex. 177 to the jury.)

I attended a committee meeting of the District Medical Society in July, 1937, and also a meeting of the Society in November, 1937. Dr. Leland was with me at both meetings. Gov. Ex. 177 concerns the July meeting. At the November meeting the subject matter was primarily Group Health and the general matter of cooperatives. To the best of my knowledge and belief I came to Washington to attend that meeting (November, 1937). At that meeting I made a statement because I was there for that purpose, to advise the District Medical Society. I did undertake to advise the District Medical Society on that occasion. The advice I gave was to procure legal counsel and be guided by counsel's advice. That is the only advice I ever gave them, unless you can add the advice that I gave them at that November meeting, "to go slow and trust to their counsel."

At the Chicago meeting there were present Dr. West, Dr. Leland, Dr. McGovern, Dr. Hooe and myself. Dr. McGovern and Dr. Hooe were there by prearrangement. The conference lasted several hours. The subject discussed

was the relation between the District Medical Society and the AMA with respect to HOLC and its relation to Group Health. The representatives of the District Medical Society "were advised that the AMA would cooperate with them in anything they might do properly." I gave them advice with respect to two matters. "One was that in so far as any contemplated procedure, any procedure might be contemplated with respect to disciplinary measures against any member or members of the Society, care be taken to have all of the proceedings in regular form. The other was that they rely on their counsel for guidance in what they did as an association." "That, I think, is all I gave them."

I saw Gov. Ex. 152. Dr. West had been to Washington and when he returned he discussed with Dr. Leland and me the matter of Group Health and the District Medical Society and then he wrote that letter. (Defense counsel read Gov. Ex. 152 to the jury.) After this the meeting occurred at which Dr. Leland and I were present.

Gov. Ex. 292 is a copy of Dr. Verbrycke's report to Dr. McGovern which was sent to me by Dr. Verbrycke at my request. I may have discussed that with Dr. McGovern but it called for no direct action by the Bureau and I filed Gov. Ex. 292. (Defense counsel read Gov. Ex. 292 to the jury.) At the time of this letter, July 12, 1937, I had not been able to obtain a copy of the contract between HOLC and GHA, though I had tried to obtain a copy through Dr. Fenton, Dr. E. H. Cary, Senator McNary, and Representative Rayburn with absolutely no success.

Q. Doctor, there was a question which I wished to ask you in connection with the conference which you had with Mr. Zimmerman and about which we talked on Wednesday last. Did you at any time in the conference with Mr. Zimmerman say anything about that Group Health Association (quote) "was going to be given a going-over at the American Medical Association meeting?"

A. I used no language that is susceptible of that construction.

Q. Did you in that meeting say to Mr. Zimmerman (quote) "He," meaning you, "predicted that it," meaning the Group Health Association—or that that would be the end of Group Health Association?

A. I did not.

Q. Did you upon any occasion leave any word at Mr. Zimmerman's office?

A. I did.

Q. When?

A. It was on the occasion of my visit there on my way back to Chicago from the Atlantic City meeting. As Dr. Brown had not communicated with me in Atlantic City, and as I had not seen a copy of the contract there in Mr. Brown's possession, Dr. Brown's possession, as Mr. Zimmerman had promised me I should do, I called at Mr. Zimmerman's office to see again if I could see the contract. I was unable to see Mr. Zimmerman; he was reported to be in conference. I did see his secretary, and I left a message for him.

Q. What was the message?

A. The message was that his entire set-up was unlawful.

I sent the original of Gov. Ex. 178 to Dr. Verbrycke. (Defense counsel read Gov. Ex. 178 to the jury.) I wrote the original of Gov. Ex. 194 to Dr. Joseph S. Wall, in Washington. I knew Dr. Wall for 40 years.

Defense counsel read Gov. Ex. 194 to the jury, as follows:

"November 5, 1937.

I thank you for your letter of November 1, relative to Group Health Association of the District of Columbia. I understand that a committee from the Medical Society of the District of Columbia is to be in Chicago on Saturday, November 6, to confer with respect to the situation, and I am glad of it."

I didn't write Gov. Ex. 153 and don't recall ever having seen it before. Gov. Ex. 136 is a photostatic copy of the minutes of the meeting of the Executive Committee of the Board of Trustees of the AMA referring to the meeting at which the representatives of the District Medical Society were present. (Defense counsel read Gov. Ex. 136 to the jury.) To the best of my knowledge I was not present at the Board meeting and took no part in the preparation of those minutes.

I wrote the original of Gov. Ex. 195 dated Dec. 8, 1937, to Dr. G. F. Simpson who was president of the Medical Society of the State of Virginia. "The Group Health Association, Inc., was not limited in its activities to the District of Columbia, but was a national organization prepared to

do business anywhere in the United States. The State of Virginia was particularly interested because of the overrunning of the Association's—that is, the Group Health Association's physicians into the neighboring counties in Virginia. For that reason I called Dr. Simpson's attention to the matter and advised that he take action to do whatever might be proper to look after the welfare of the medical profession in his own state." (Defense counsel read Gov. Ex. 195 to the jury.) The Journal article of October 2, 1937, referred to was based on my report to the Board of Trustees, which, however, was substantially edited before publication. Gov. Ex. 189 is my letter transmitting my report to the Board of Trustees to which is attached a carbon copy of the report itself. The report was submitted on September 1, 1937, and I had been working on it since I received Dr. Verbrycke's letter of May 29, 1937, "But more particularly since the resolution of the Board of Trustees instructing Dr. West and Dr. Fishbein to acquaint the medical profession of the country with the facts concerning the situation." (Defense counsel read Gov. Ex. 189 to the jury.)

Gov. Ex. 294 is the original of my report. This contains notations or reference to supporting proof or the bases upon which my report was made. It also contains notations in the margin and changes in pencil and otherwise that were not made in the Bureau of Legal Medicine and Legislation. Gov. Ex. 293 contains the article which was substantially edited and printed therein. (Defense counsel read Gov. Ex. 293 to the jury.) My article on Group Health in the Journal was based on the certificate of incorporation of Group Health, but the reference to the contract was to the contract between HOLC and Group Health, which we had tried in vain to get a copy of or to see. Also the 19-page prospectus of Group Health marked "Confidential—For Private Circulation Only"; the code of the District of Columbia, 1929, title 5, chapter 7, Sec. 179; newspaper reports; the by-laws of Group Health; U. S. C. A., Title 31, Section 203; three decisions of the Comptroller of the Treasury; an opinion of the Attorney General; two New York State decisions; U. S. C. A., Title 5, Section 529; Section 595; and the Congressional Record of July 27, 1937, page 9939, and the by-laws of Group Health, Article 10, Sections 2, 3, and 5.

Q. Now, Doctor, to what did you refer when you stated: "The effect of the withdrawal from private practice of even one-half that number", which refers back to the figures 347,736 persons, "all of whom are able to pay for medical services, will materially disturb medical practice in the District of Columbia and react against public interest."

A. Under the setup of Group Health Association, Incorporated, the cost of medical services to the members of the organization was to be paid in large part by the United States Government. If GHA expanded its activities to a point where it took over a substantial part of the people of the District of Columbia—rich and poor alike,—the United States Government subsidizing its services—it is quite obvious that the various doctors in the District of Columbia, with their plants, with their experience, and everything else, would not be able to compete on a fair, honest basis; and that is when medical practice would be broken down by the subsidized practice, tending to destroy the medical profession.

Q. What did you mean when you said that it would react against the public interest?

A. Anything that destroys the medical profession anywhere reacts against the public interest.

Q. Now, Doctor, what was your authority for stating the population of the District at that time, as entered in your report or in your notation there?

A. I wrote, "the population of the District was 486,869 in 1930," citing as my authority the Chicago Daily News Almanac, 1937, page 130.

Q. I think you told us the source of your authority for the number of civilian employees of the United States Government here?

A. I believe I quoted the Congressional Record on that.

Q. Yes, that was the Congressional Record. Now, Doctor, to what did you refer when you stated in your conclusion: "Physicians who sell their services to an organization like Group Health Association for resale to patients are certain to lose professional status."

A. A physician's primary duty is always to his patient, except in times of active military service when a man might owe a greater duty to the service of his country; and when a physician makes a contract with a corporation in which he agrees to serve it, take his orders and instructions from it, or being always subject to the possibility of having to take

orders and instructions from it regardless of the welfare of the patient, he has lost professional caste and he is not serving his patients to the patient's best interests; that is, he may not be.

Q. Now, Doctor, again, upon what did you base your statement in the conclusion that: "Fees that are charged for medical services to the richer and more liberally paid employees are to be identical with those charged employees of the lowest grade, doing part-time work."

A. There is no provision in what were purported to be the by-laws of the association, and which were the by-laws of the association at that time, making any distinction in grading the dues to be paid by the members in any way in relation to their salaries. Even in the prospectus introduced in evidence, it is pointed out that it might be done so that the poorer, the more poorly paid employees would be paying a sum in proportion to their ability to pay—they actually would be paying more—but there was nothing of that kind subsequently done. As I say, the lowest paid employee of HOLC was to pay exactly as much for the services received and the right to receive these services as was to be paid by the highest paid officer in the whole HOLC.

I conferred with many persons and referred to many sources in the preparation of my report. I talked with various members of the District Medical Society while preparing this report, as I was back and forth between Chicago and Washington, but the only connection was in according the information I might use in the preparation of the report. I don't know of anyone in the District of Columbia who had any direct knowledge that I was preparing such a report.

At the meeting of the District Medical Society in November, 1937, I spoke extemporaneously. I was asked to speak. What is reported in Gov. Ex. 37 is consistent with what I said on other occasions. My talk was a summary statement largely of the facts which were embodied in the Journal article of October 2, 1937. I again suggested that the Society have competent counsel and be guided by their advice and suggested the plan of laying the evidence before the corporation counsel and district attorney, showing them it is their duty to act, to counsel them to act, and if they will not act, appeal to Congress is the only course. I said that in my judgment, with the law as clear as it is, you will

have no difficulty in having proceedings instituted for the unlawful practice of medicine by a corporation and engaged in the business of insurance without having properly qualified. I "advised strongly that no further steps be taken until the Society has had the advice of counsel" and "it is not desirable to try a case in the newspapers."

Other than that mentioned, I had no connection with any meetings of the District Medical Society and I had no knowledge of the contents of their minutes. I had no knowledge of any correspondence written by or received by Dr. Cutter, Dr. West and Dr. Leland, other than that already mentioned and in addition the Ireland letter. Dr. Cutter had very little connection with my Bureau. I had no consultation or conference with Dr. Cutter concerning Group Health.

"I was frequently in conference with Dr. West. He was the responsible officer of the Association generally. At times in those conferences the matter of GHA would come up, undoubtedly, although at the present moment I could not state any particular conference in which the matter was discussed. With respect to Dr. Fishbein, who was operating the Journal, conferences were very much less frequent, and I recall no particular conference with him except in relation to the publication of the article that has been referred to."

With the exception of our visits to Washington, I know of no specific action that was taken as the result of a joint agreement between Dr. Leland and me. He might come in and ask a question, show me a letter, go back; I might do the same thing, with respect not only to Group Health, but with respect to many other matters relating to the practice of medicine, and things of that sort. Excepting the two visits to Washington and the meeting of November 6, 1937, I recall no specific conference relating to Group Health or anything of that sort. I had never heard any letter written by Dr. Leland or his staff before they were read to the jury here.

I did not conspire with anyone for the purpose of restraining trade in the District of Columbia or for the purpose of restraining Group Health, or its business, and my conduct and actions were confined to recommendations that any action, if taken against Group Health, be taken by the District Attorney and the Corporation Counsel. I never visited either officer. I did not conspire for the pur-

pose of restraining members of Group Health from obtaining by any lawful methods by cooperative efforts adequate medical care from doctors engaged in group medical practice on a risk-sharing prepayment basis. The only members or persons connected with Group Health I ever talked to was Mr. Zimmerman. I never attempted to prevent any person from joining Group Health or remaining a member thereof. I never conspired for the purpose of restraining doctors or surgeons, on the staff of Group Health or doctors not on the staff of Group Health, or the business of the Washington hospitals. The subject matter of the hospitals in connection with Group Health, never came to my individual attention, though the hospitals were mentioned while I was present at one of the meetings of the Medical Society, but I took no part in such discussions.

It was rumored that the Twentieth Century Fund of Edward A. Filene was behind the Group Health movement, and the annual reports of the Twentieth Century Fund disclosed that for a year, year and a half, possibly longer, the Twentieth Century Fund had been actively at work with the Home Owners' Loan Corporation to induce that corporation to take up some group health scheme. On examining the minutes of the Medical Society of April 6, 1938, I remember being present at that meeting. I had overlooked this. (Defense counsel read a portion of Gov. Ex. 37 to the jury.)

On December 24, 1937, I received a document dated December 21, 1937, marked Def. Ex. 30.

Thereupon Def. Ex. 30 was offered in evidence. It was objected to as immaterial, which objection was sustained. Exception was allowed the defendants. Def. Ex. 30, offered in evidence, reads as follows:

"The Medical Society of the District of Columbia

1718 M Street

Washington

Dr. W. C. Woodward, Director, Bureau of Legal Medicine and Legislation, American Medical Association, 535 N. Dearborn Street, Chicago, Illinois.

"DEAR DOCTOR WOODWARD:

"Enclosed herewith for your information is copy of communication addressed to the Honorable Patrick A. McCar-

ran by R. N. Elliott, Acting Comptroller General of the United States.

"Very truly yours,

C. B. Conklin, M. D. Secretary."

"December 16, 1937.

"Honorable Patrick A. McCarran, United States Senate.

MY DEAR SENATOR:

"There has been received your letter of December 1, 1937, as follows:

"'I am advised by Mr. Pennyman of the Home Owners' Loan Corporation and by others that a voluntary association has been effected from within the membership of the employees of the Home Owners' Loan Corporation, which voluntary association is known as the Group Health Association.

"'I am also advised from several sources that this voluntary association, in cooperation with the Home Owners' Loan Corporation facility has diverted or is about to divert and use some $20,000.00 a year for two years to finance this group organization, and that on the basis of this use of public moneys, a social health organization has been set up, which organization will depend, as I understand it, on voluntary contributions from the employees of the Home Owners' Loan Corporation.

"'I respectfully request information from you as to what authority of law public funds have been diverted or are being used in the institution of this voluntary association. I will appreciate your full advice on the subject.'

"The only funds lawfully available to the Home Owners' Loan Corporation after June 30, 1937, were appropriated by the Act of June 28, 1937, Public 171, as follows:

"'Not to exceed $30,000,000 of the funds of the Home Owners' Loan Corporation, established by the Home Owners' Loan Act of 1933 (48 Stat., p. 128), shall be available during the fiscal year 1938 for administrative expenses of the Corporation, including personal services in the District of Columbia and elsewhere; travel expenses, in accordance with the Standardized Government Travel Regulations and the Act of June 3, 1926, as amended (U. S. C., title 5, secs.

821-833); printing and binding; law books, books of reference, and not to exceed $500 for periodicals and newspapers; procurement of supplies, equipment, and services; maintenance, repair, and operation of motor-propelled passenger-carrying vehicles, to be used only for official purposes; typewriters, adding machines, and other labor-saving devices, including their repair and exchange; rent in the District of Columbia and elsewhere; use of the services and facilities of the Federal Home Loan Bank Board, Federal home-loan banks, and Federal Reserve banks; and all other necessary administrative expenses; *Provided*, That all necessary expenses (including services performed on a force account, contract or fee basis, but not including other personal services) in connection with the acquisition, protection, operation, maintenance, improvement, or disposition of real or personal property belonging to the Corporation or in which it has an interest, shall be considered as non-administrative expenses for the purposes hereof: *Provided further*, That except for the limitations in amounts hereinbefore specified, and the restrictions in respect to travel expenses, the administrative expenses and other obligations of the Corporation shall be incurred, allowed, and paid in accordance with the provisions of said Home Owners' Loan Act of 1933, as amended (U. S. C., title 12, secs. 1461-1469).'

"An examination has been made in the records of the Home Owners' Loan Corporation, to determine in general the relationship of the corporation with the Group Health Association, Inc., formed and incorporated under the laws of the District of Columbia for the purpose of furnishing medical and hospital service to the employees of the corporation and other civil employees of the executive branch of the United States Government. Following is a list of all official documents examined, copies of which are attached, marked exhibits (a) to (p):

"(a) Opinion, dated December 23, 1936, and memorandum, dated December 28, 1936, by Horace Russell, General Counsel, Home Owners' Loan Corporation, on the legal authority of the corporation to aid its employees in the development of medical and hospital service.

"(b) Memorandum, dated March 1, 1937, by R. R. Zimmerman, submitting proposed plan of Group Health Asso-

ciation, Inc., prepared by R. V. Rickcord, of The Twentieth Century Fund, Inc.

"(c) Excerpt from minutes of a meeting of the board of directors of the Home Owners' Loan Corporation, of March 2, 1937, regarding plan proposed by Mr. Rickcord.

"(d) Letter of March 11, 1937, by the General Counsel of the Home Owners' Loan Corporation, submitting proposed resolution to the board, authorizing a contract between the corporation and the Group Health Association, Inc.

"(e) Resolution, dated March 17, 1937, adopted by the board of directors of the Home Owners' Loan Corporation, approving form of contract and authorizing chairman of board to execute same on behalf of the corporation.

"(f) Certified copy of contract, dated March 22, 1937, entered into between the corporation and the Group Health Association, Inc., under which the corporation agreed to pay to the association $40,000 over a period of two years, in consideration of certain medical benefits to its employees to be derived therefrom.

"(g) Excerpts from minutes of a meeting of the board of directors of the Home Owners' Loan Corporation, dated March 22, 1937, nominating two trustees to the Group Health Association, Inc., pursuant to paragraph 4 of contract dated March 22, 1937.

"(h) Resolution, dated June 4, 1937, adopted by the board of directors, approving by-laws of the Group Health Association, Inc.

"(i) Resolution, dated June 7, 1937, adopted by the board of directors of the corporation, authorizing deduction to be made on corporation payrolls from salaries due employees who have executed assignment to the Group Health Association, Inc., for such medical service to be rendered to them by the association.

"(j) Resolution, dated August 10, 1937, adopted by the board of directors of the corporation authorizing a cash advancement of $15,000 to the association, to be deducted from the second-year payments provided for in the contract of March 22, 1937, to make possible certain contemplated economies in the repair and lease of building and purchase

of professional and scientific equipment, also that the corporation will make available to the association such governmental facilities to purchase supplies and equipment at Government contract rates, repayment therefor to be made from such cash advancement granted to the association under the above-stated contract and this resolution.

"(k) Resolution, dated September 9, 1937, adopted by the board of directors, authorizing an additional $5,000 cash advancement to the association in lieu of the second-year payments to be made by the corporation under contract of March 22, 1937.

"(l) Excerpt from minutes of a meeting of the board of directors of the corporation, dated October 1, 1937, pertaining to the appointment of a committee to draft letter on a plan for group medical service for employees of the board and agencies under its supervision.

"(m) Letter, dated November 16, 1937, to the Federal Home Loan Bank Board, by Assistant Secretary H. R. Townsend, submitting amended by-laws for approval by the board.

"(n) By-laws of Group Health Association, Inc., as revised on October 25, 1937, and approved by the board of directors of the corporation on November 19, 1937.

"(o) Assignment of pay form. Upon execution of this form the employee directs the corporation to make semimonthly deductions from his pay for dues, which amounts are to be paid over to the Group Health Association, Inc.

"(p) Form of application for membership in the Group Health Association, Inc.

"The foregoing list covers all the important documents pertaining to the formation of the association, except the articles of incorporation filed in the office of the Recorder of Deeds of the District of Columbia.

"Pursuant to article 5 of the agreement of March 22, 1937, as amended by resolutions of August 10, 1937, and September 9, 1937, adopted by the board of directors of the Home Owners' Loan Corporation, there has been advanced to the Group Health Association, Inc., cash in the amount of $30,000 which is recorded in the books of the corporation as 'Prepaid Expense'. Following is a record

of transfers of such funds under appropriation symbol and title '699-900, Expenses general, Working Fund';

Date of Voucher	Voucher No.	Check No.	Date of Check	Amount Paid
6/8/37	104162	480531	6/8/37	$500
7/2/37	119227	500225	7/2/37	500
8/2/37	125378	563676	8/2/37	1,000
8/18/37	126864	565551	8/18/37	23,000
9/18/37	128562	567376	9/18/37	5,000
Total Advanced				$30,000

"In addition to the foregoing the corporation has purchased on behalf of the association certain supplies and equipment in the sum of $7,357.65, the *net* amount of which is reflected on the books of the corporation as 'Accounts Receivable', representing the following transactions which are set out in detail as an indication of probable administrative costs:

D. C. Vou. No.	Check No.	Date of Check	Amount Paid	Payee	Item
1276	32618	8/ 9/37	$10.47	Geo. F. Muth & Co.	Tracing Cloth
3305	45530	8/18/37	1.50	Leet Bros. Co.	B. P. Paper
*3764	50884	8/20/37	3.90	Geo. F. Muth & Co.	B. P. Paper
4695	51819	8/26/37	3.30	Leet Bros. Co.	" "
6096	69399	9/11/37	201.50	Dr. Raymond Selders	Hosp. Equipment
128519	567339	9/16/37	2.90	Leet Bros. Co.	B. P. Paper
128520	567340	"	1.45	" " "	" "
12632	106792	10/ 4/37	5.80	" " "	" "
*129117	567998	10/ 2/37	10.24	Hosp. Equip. Corp.	Hosp. Equip.
*129193	568115	10/ 6/37	5.00	Fisher Scient. Co.	Supports
*129194	568116	10/ 6/37	12.73	Stout Senct. Sup. Corp.	Med. Supplies
129523	568476	10/15/37	1.74	Leet Bros. Co.	B. P. Paper
*129706	568722	10/20/37	1.78	P. Myer, Inc.	Med. Supplies
*129888	568867	10/22/37	50.02	Eastman Kodak Co.	Supplies
129889	568862	"	35.10	Lalance & Grosjean Mfg. Co.	Hosp. Equip.
*129890	568869	"	79.87	" " " " "	" "
129691	568870	"	11.17	Becton Dickman & Co.	" "
*129892	568887	"	4.41	Scientific Hosp. Supply Co.	Med. Supp.
129956	568940	"	3.70	Z. D. Gillman Corp.	Med. Supp.
128957 [fol. 734]	568941	"	9.00	Geo. Wakeman Mfg. Co.	Hosp. Equip.
*129970	568951	10/22/37	7.53	V. L. Vuckman Co.	Med. Supp.
*129995	569001	10/26/37	9.53	Jos. Dixon Crucible Co.	Hosp. Supp.
130028	569032	"	71.04	Lycoming Furniture, Inc.	Furniture
130096	569102	"	188.75	Sanborn Co.	Hosp. Equip.
*130078	569071	10/27/37	11.47	Bard Parker Co., Inc.	" "
*130077	569072	10/27/37	75.50	The Toreson Balance Co.	Hosp. Equip.
130078	569073	"	83.60	The Pandora Prod. Co.	Hosp. Equip.
*130079	569074	"	5.29	Wilson Rubber Co.	Rubber Gloves
130080	569075	"	40.00	The Toreson Balance Co.	Hosp. Equip.
130081	569076	"	56.54	Gen. Fireproofing Co.	File Cases
*130095	569101	"	5.76	Philbern Thermometer Co.	Hosp. Equip.
*130097	569103	"	4.17	The Gibson Co.	Med. Supplies
*130098	569104	10/27/37	7.17	John M. Moris Co.	Med. Supplies
*130099	569105	"	11.24	Williams, Brown & Earl, Inc.	Hosp. Supplies
*130100	569106	"	.77	Henry Allen	" "
*130505	569512	11/ 8/37	9.53	M. S. Ginn & Co.	" "
*130506	569513	"	3.96	Weksler Thermometer Corp.	" Equip.

D. C. Vou. No.	Check No.	Date of Check	Amount Paid	Payee	Item
*130776	569881	11/22/37	7 76	J. Bishop & Co.	Med. Supplies
130777	569882	"	48 80	Kayden-Paper-Klien	Hosp.
130778	569883	"	99 40	Gen. Elec. Supply Co.	Refrigerator
130779	569884	"	36	" " "	Globe
*130780	569885	"	52 50	American Instrument Co.	Hosp. Equip.
*130781	569886	"	20 15	W. M. Ballard Co.	Chairs
130782	569887	"	630 70	Gen. Electric Ex-Ray Co.	Hosp. Equip.
*130783	569888	"	6 93	E. H. Shargent & Co.	Med. Supplies
130784	569889	11/22/37	2 00	Art Metal Furnishing Co.	Clock Repairs
130785	569890	"	8 85	E. H. Shargent & Co.	Hosp. Supplies
*130786	569891	"	20 70	Davis & Gich, Inc.	" "
*130787	569892	"	2 90	Marrita Char. Co.	" Equip.
*130788	569893	"	1 58	A. Doigger Co.	" "
130789	569894	"	26 95	A. S. Ice Co.	" "
130849	569932	11/25/37	33 25	Cohen's	" "
*130957	570059	11/29/37	12 90	E. H. Shargeft Co.	" "
130956	570058	"	478 90	Wilmot Castle Co.	" "
130958	570060	"	400 16	A. H. Thomas Co.	" "
*130995	570101	11/30/37	7 62	Hygrade Sylvinia Corp.	Elec. Bulbs
*130996	570102	"	4 26	Gen. Hosp. Equip. Co.	Med. Supplies
*130997	*570103	"	80 49	The Harter Corp.	Hosp. Equip.
*130998	570104	"	22 43	Swendell Co.	" Supp.
*130999	570105	"	44 74	The Globe Wernicke Co.	Office Furniture
*130000	570106	"	6 22	Hugh Riley Co.	Hosp. Supp.
131001	570107	"	9 45	John S. Morritz Co.	" "
131002	570108	"	685 80	Hancia Chemical & Mfg. Co.	Ultra Violet Lamp
131003	570109	"	4 50	Kloman Instrument Co.	Hosp. Supp.
*131004 [fol. 735]	570110	"	52 30	Gen. Fireproofing Co.	File Cabinets
131005	570111	11/30/37	3075 00	Picher X-Ray Corp.	X-Ray Mach.
131008	571144	11/30/37	639 09	Kloman Instrument Co.	Hosp. Equip.
131009	571115	"	4 65	Barber & Ross Co.	Hardware
*131010	571116	"	22 67	Charles G. Stott & Co.	Desk Pens
131011	571117	"	22 88	J. Frank Kelley, Inc.	Lumber
Total			$7584 12		
Less: Adjustment Voucher			226 47	Charged to Administrative Expense Account, H.O.L.C.	
Total Accts. Receivable			$7357 65		

* Purchases made through the Procurement Division, Treasury Dept.

"Although the agreement of March 22, 1937, provided for an advancement from public funds of $40,000 payable over a period of two years, at a rate of $20,000 per year, to aid in the organization and establishment of the Group Health Association, Inc., the records show that a total of $37,357.65 has been advanced and expended by the corporation as of December 4, 1937. Actual operations of the Group Health Association, Inc., did not begin, however, until November 1, 1937. In this connection it was learned that the emergency rooms of the corporation are still being maintained (an activity similar to those maintained in most departments and establishments, which are of doubtful legality) and that physical supervision of the rooms was

taken over by the Group Health Association, Inc., on December 1, 1937, although the four nurses employed are carried on the rolls of the corporation. It is stated by officials of the corporation that the formation of the association and the authorized advancement of public funds to it were to relieve the corporation of the expense of operating and maintaining the emergency room, estimated by the comptroller of the corporation to cost approximately $20,000. However, the general counsel, subsequently, informally voiced an opinion that such costs would not exceed $7,000 per year.

"Under date of December 23, 1936, the general counsel of the Home Owners' Loan Corporation rendered an opinion (Exhibit (a)), holding that the funds of the Home Owners' Loan Corporation, the Federal Home Loan Bank Board, and the Federal Savings and Loan Insurance Corporation were available to pay reasonable expenses in connection with the organization and operation of a medical service for the general benefit of employees, and also for expenses in connection with the operation of a credit union operated for the general benefit and relief of employees.

"The opinion is apparently based on the theory that the above-named corporations have implied powers to incur expenses, payable from public funds, for the general benefit and relief of employees, the implication being based on the provisions of section 19 of the Federal Home Loan Bank Act, 47 Stat. 737, which provides:

"'The Board shall have power to select, employ and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary for the performance of its duties under this Act without regard to the provisions of other laws applicable to the employment or compensation of officers, employees, attorneys, and agents of the United States. No such officer, employee, attorney, or agent shall be paid compensation at a rate in excess of the rate provided in the case of members of the board. The board shall be entitled to the free use of the United States mails for its official business in the same manner as the executive departments of the government; and shall determine its necessary expenditures under this Act and the manner in which they shall be incurred, allowed and paid.'

and section 4 (j) of the Home Owners' Loan Act of 1933, 48 Stat. 131, as amended, which provides:

"'The Corporation shall have power to select, employ, and fix the compensation of such officers, employees, attorneys, or agents as shall be necessary for the performance of its duties under this Act, without regard to the provisions of other laws applicable to the employment or compensation of officers, employees, attorneys, or agents of the United States. No such officer, employee, attorney, or agent shall be paid compensation at a rate in excess of the rate provided by law in the case of the members of the Board. The Corporation shall be entitled to the free use of the United States mails for its official business in the same manner as the executive departments of the Government, and shall determine its necessary expenditures under this Act and the manner in which they shall be incurred, allowed, and paid, without regard to the provisions of any other law governing the expenditure of public funds. The Corporation shall pay such proportion of the salary and expenses of the members of the Board and of its officers and employees as the Board may determine to be equitable, and may use the facilities of Federal Home Loan Banks, upon making reasonable compensation therefor as determined by the Board.'

"It thus appears that the Congress limited the expenditures by the corporations to 'necessary expenditures under this Act,' as both provisions, supra, contain those words.

"'Specific legislation has been enacted by the Congress from time to time for the welfare of Federal employees, both civil and military, such as retirement laws, pension laws, and laws for relief of employees injured in line of duty. The enactment of such laws negatives the implication of such powers from general statutory provisions controlling other activities of the Government.

"Over 500 of the employees of the corporations here involved have authorized deductions to be made from their salaries for dues, which amounts are to be paid over to the Group Health Association, Inc. In this connection attention is invited to section 3477, Revised Statutes, as amended, section 203, Title 31, of the United States Code, which provides:

"'Assignments of claims void. All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same. The provisions of this section shall not apply to payments for rent of post-office quarters made by postmasters to duly authorized agents of the lessors. (R. S. section 3477; May 27, 1908, c. 206, 35 Stat. 411).'

"Furthermore, the act of June 20, 1874, 18 Stat. 109, provides that no such civil officer of the Government shall receive any compensation or prerequisites, directly or indirectly, from the Treasury or property of the United States beyond his salary or compensation allowed by law. Needless to say the instant activity does provide prerequisites not allowed by law, and this at great expense to the United States in carrying out the arrangements stipulated, such as advances, purchases at net costs, and deductions from pay rolls, the expenditures on account of which are made in contravention of section 3678, Revised Statutes, which provides that:

"'All sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others.'

"It has been the long-established rule in the Federal service that the functions of the agencies of the United States are restricted to those activities authorized by gen-

eral or special enactments of the Congress, and where an activity involves the expenditure of moneys of the United States, the appropriation laws must make the moneys available therefor in no uncertain terms if such activity is to be accepted as lawful. Accordingly, it must be concluded in the instant matter that the disbursements and other costs were made and incurred without authority of law.

"Sincerely yours,

"(Signed) R. N. Elliott, Acting Comptroller General of the United States."

Cross-examination.

By Mr. Kelleher:

Q. Dr. Woodward, in connection with your activities with reference to GHA you were engaged first in making proposals seeking to forestall the growth of GHA?

A. No.

Q. Let me show you Gov. Ex. 202, a photostatic copy, and ask you if that isn't your letter.

A. It seems to be.

Q. And in that letter don't you say that you have no further proposals at present looking toward forestalling the growth of Group Health Association?

A. I do.

I first became interested in Group Health after I received the letter from Dr. Verbrycke dated May 29, 1937 (Gov. Ex. 441-A). I then conferred with Dr. West and came to Washington and after great difficulty I saw Mr. Zimmerman. I told Mr. Zimmerman that if the Government could make loans to HOLC or to GHA, there was no reason why loans couldn't be made to other groups throughout the country. I didn't have an appointment to see Mr. Zimmerman when I saw him the first time; I had never heard of him before. After this talk I went to Atlantic City and left this matter to the Board of Trustees. I reported the substance of my conversation with Mr. Zimmerman to the Board.

I didn't look for Dr. Brown and didn't attempt to locate him at Atlantic City, as I only knew him as Dr. Brown and there are a great many Doctors Brown. I did not have an appointment to see Mr. Zimmerman when I came back to

Washington. I left a message for him telling him that the whole setup was unlawful. I never heard from him again. When I went back to Chicago I think I saw the letter from Dr. Herbst to Dr. West dated June 6, 1937 (Gov. Ex. 106). I contacted Dr. Herbst about the letter and later saw Dr. Verbrycke. I am sure I was in Washington at least once between my return from Atlantic City and July 14, 1937. I wrote Gov. Ex. 177 and it reflects the true facts.

I made the memorandum marked Gov. Ex. 657. Gov. Ex. 657 was received in evidence and read to the jury as follows:

"No official communication was received from any officer of the Medical Society of the District of Columbia concerning the developments there represented by this report. The fact that representatives of the Society had been in conference with representatives of Group Health Association, Inc. and a summary of results came to the notice of the American Medical Association first through its mention incidentally in a letter from Dr. W. P. Herbst to Dr. West, concerning the entire matter. On the basis of that letter Dr. Woodward telephoned to Dr. Verbrycke concerning the situation and as a result received the accompanying report and the promise of a copy of the minutes of the conference."

Q. When you talked with Dr. Verbrycke do you recall that you referred to the statement in the Herbst letter that the District Medical Society intended to go along with GHA if it could do so and save its face?

A. I may have done so. I cannot claim any accurate recollection of the telephone conversation on June 29, or thereabouts, in 1937.

Q. Referring to Exhibit 177, see if this correctly states the facts (reading):

"About 4 o'clock p. m. June 28 I talked to Dr. J. Russell Verbrycke, Jr., Washington, D. C., relative to certain statements in the letter just received by Dr. West from Dr. William P. Herbst relative to Group Health organized under the auspices of HOLC."

A. That memorandum is correct. I will stand by that.

Q. (Continuing reading):

"I referred particularly to Dr. Herbst's statement that the representatives of the Medical Society of the District of Columbia who met with representatives of the Associa-

tion plan to go along with the Association if they could do so and save their faces."

Is that statement correct?

A. If it is in there, it is correct; and I assume you read it from that memorandum.

I received a copy of Dr. Verbrycke's letter of July 12, 1937 to Dr. McGovern (Gov. Ex. 292). I had a telephone conversation with Dr. Verbrycke on June 28.

Q. Did not Dr. Verbrycke at that time state that he would send you by airmail special delivery a copy of the report which his subcommittee had made to the Executive Committee of the Medical Society?

A. I believe he did.

Q. Do you recall that you received that report?

A. No, sir; I do not.

Q. Will you look at Exhibit 36, which is the minutes of the Medical Society, and examine the report which I show you and tell me whether you ever saw that report before?

A. I believe I did.

Q. So that in addition to the letter of July 12, 1937, you also received the report of Dr. Verbrycke to the Executive Committee?

A. I believe I did.

Q. Do you recall that in that report it was stated that GHA "As now constituted" was unethical and that members of the Society cannot become members of the staff of that organization and still remain members of the District of Columbia Medical Society or the AMA.?

A. I don't recall a detail of that sort. It may have been in there.

Mr. Leahy: What is the date of those minutes?

Mr. Kelleher: June 21, 1937.

I also received a transcript of the meeting between the representatives of HOLC and the Executive Committee of the District Medical Society on June 24, 1937.

Q. Dr. Woodward, when you undertook, as a result of the meeting of June 29, 1937 of the Board of Trustees of AMA, to investigate GHA, you also had another duty, did you not, as a result of the delegation to the Board of Trustees at the June 29th meeting?

A. You mean the duty of proceeding to Washington?

Q. Yes?

A. Yes.

Q. Why were you authorized to proceed to Washington?

A. To confer with representatives of the Medical Society of the District of Columbia.

Q. Was it to confer or to advise the Medical Society of the District of Columbia?

A. My recollection is, now that you speak of it, that the memorandum ended up with the statement that we were to advise the Medical Society of the District of Columbia if it would take advice.

Q. So that you had two duties: first, to obtain what information you could and, second, to advise the Society if it would take advice?

A. One duty, if you will; it is all one duty.

Q. But you did not mean to leave the impression with the jury during your direct examination that all you were doing was to obtain information?

A. I do not think I left any such impression as that.

Q. You may not have, but I wanted to clear it up if you did.

A. It has been repeatedly shown in the evidence that I advised them to take legal counsel. That was my advice.

Q. You were advising them throughout the period——

A. I advised them to take legal counsel, every chance I got to give any advice.

Q. Before you came to Washington on July 14, 1937, you had received the second Verbrycke report, that is, a letter from Verbrycke to Dr. McGovern dated July 12, 1937, had you not?

A. I am not sure of the date of the meeting as July 12.

Q. July 12 is the date of it.

A. The letter will show. I cannot recall whether I had it in my possession before I left Chicago or not. The time stamp will show.

Q. In any event, you had it a short time after the meeting?

A. Yes, sir.

Q. As result of your receiving that report you knew, did you not, that the Society in the District of Columbia was considering as one alternative policy the disapproval of GHA and "active combat with all measures at our command"?

A. There was some such suggestion in Dr. Verbrycke's letter. I do not recall that the District of Columbia Medical Society had ever adopted his letter as a guide for its official action.

Q. But at least you knew as of the time you received that letter that the Society was considering that?

A. I knew that Dr. Verbrycke had written a letter to that effect. But that is all I knew.

Q. And he had been on the first subcommittee appointed by the Society to consider GHA?

A. I do not know that he was.

Q. At least he was the one that contacted you and asked you to come in?

A. Yes; and he said he was about to retire, and I think that in his second letter he said he had no official status.

Q. But until he retired he was on a subcommittee, was he not?

A. That I do not know.

Q. When you came here in June you talked with Dr. Verbrycke, did you not?

A. I did.

Q. And did you not learn as of that time that he was on a committee of the Society to study GHA?

A. I knew that he had some official position, some connection with the District of Columbia Medical Society, but that it had any specific relation to GHA I did not know; and my recollection is that of the same date that Dr. Verbrycke wrote me, he wrote to Group Health Association, Inc. saying that the existence of the organization had been called to his attention and begging them to send him a copy of their constitution and by-laws and anything else that might enable the Medical Society to give consideration to that organization.

Q. Did you not also know as a result of the Verbrycke letter that the proposal of Dr. Verbrycke concerning opposition was that failure to place a cooperative on the approved list of the Society would automatically prevent consultations?

A. I think he may have made some such statement, although I do not recall that he did.

Q. Did he not also state that another means of opposition would be by preventing doctors connected with GHA from being placed on the courtesy staffs of local hospitals?

A. That may have been Dr. Verbrycke's opinion and he may have stated it. It was not the official action of the American Medical Association or the District of Columbia Society.

Q. Do you know it was not the official action of the District of Columbia Society? Do you not know that it was reported as the report of the Executive Committee—this letter?

A. It may have been of the Executive Committee of the Society.

Q. Then it became the official action of the Executive Committee?

A. Yes; the Executive Committee only.

Q. It is true, is it not, that Dr. Verbrycke stated this possible policy in his letter to Dr. McGovern?

A. I believe he did.

* * * * * * *

The Witness: I believe the statement, however, that I had knowledge of that as the action of the Medical Society of the District of Columbia is not correct, because I had no such knowledge, and I just stated that I understood it was the action of the Executive Committee.

By Mr. Kelleher:

Q. I am satisfied with that, Doctor Woodward. The matter we are now referring to is the following alternatives of policy:

1. Approval of cooperatives as at present outlined.

2. A laissez faire attitude of seeing what will happen.

3. Disapproval and active combat with all measures at our command.

4. Disapproval of all other plans and the offer of prepay medicine through the Medical Society (a) either as a Society subsidiary or (b) through a change in the medical-dental service bureau."

"The first of these proposals is manifestly an impossibility. The second alternative involves inertia more than any other factor. Active opposition is impossible at present. Whether it is advisable is another matter. Unless some substitute plan can be suggested, failure to place a co-

operative on the approved list of the Medical Society would automatically forbid any consultation by members of our Society. Any full-time employee of the Corporation could probably easily fail to be put on the courtesy list of the hospital for one reason or another without the fact of his connection with the cooperative being even mentioned. In fact, any combative method would necessary have to be camouflaged to the Nth degree."

It is your testimony now, is it not, that you read this copy of Dr. Verbrycke's letter to Dr. McGovern?

A. Yes; I read that letter representing Dr. Verbrycke's opinion without employing any adoption by the Medical Society of the District of Columbia or any approval by the American Medical Association or by me. It is a matter of opinion. It is an argumentative suggestion of all the possibilities of what might be done and, by implication what might not be done, and it goes no further.

Q. And you also knew at the same time that this was the report adopted by the Executive Committee of the Society?

Mr. Burke: If you have a record that shows that is not true, why do you ask the question? Look at the record.

Mr. Lewin: It was adopted by the McGovern committee; it was referred to the Executive Committee, and it was laid on the table for further consideration.

Q. Dr. Woodward, as a matter of fact you did learn, did you not, that the Society had issued an approved list of organizations from which Group Health Association was omitted?

A. I learned that they had issued an approved list. Later I heard incidentally that Group Health Association had been omitted. There was nothing on the list that I personally received from the Association that indicated even the existence of Group Health Association.

Q. Dr. Woodward, you testified the other day—I guess it was last Saturday—that you received the approved list at your home, did you not?

A. Yes.

Q. And you testified that you took it to the office, did you not?

A. Yes, sir.

Q. And you also testified that you took it to the office be-

cause you felt that it might be useful if any inquiries came up concerning Group Health Association?

A. Yes.

Q. And, as a matter of fact, Group Health Association's name does not appear on the list, does it?

A. So I understand.

Q. Did you not understand that Exhibit 45, which is the letter from Dr. Conklin addressed "Dear Doctor", with which the White List was enclosed—did you not understand from that letter that the approved list related to Group Health Association?

A. No. I gave no particular thought of that. I was at that time an associate member of the Medical Society of the District of Columbia and was therefore on its mailing list, and, living at a Chicago address, it came to me at Chicago. I paid no particular attention to it either one way or the other.

Q. But when you read the following:

"It may have come to your attention that there is an organization or organizations that are interested in getting medical personnel"——

Did you not understand that that referred to Group Health Association?

A. I inferred that that indicated or had reference to Group Health.

Q. So, then, when you received Gov. Ex. 45 it was your understanding then that the first recommendation or first proposal of Dr. Verbrycke's that Group Health Association be omitted from the approved list of organizations and thereby consultations automatically prevented, had been adopted by the Society.

A. No. I gave no thought to the matter at the time.

Q. As a matter of fact, when this letter and the enclosed list of approved organizations were received you did understand that the letter had reference to Group Health Association?

A. It advised conferring with the proper officers, as I recall it, of the Medical Society of the District of Columbia with respect to any contracts one might want to enter into.

Q. And called attention to the constitution, and that the contracts must be approved by the committee?

A. Yes. There was nothing in there to show that he had identified himself with Group Health Association.

Q. Group Health Association's name was omitted?

A. Group Health Association's name was omitted. It was not named there.

I knew that a meeting of the District Medical Society had been held on June 29, 1937 and Dr. Conklin wrote me that at that meeting Group Health had been discussed and that the discussions had ranged from drastic boycotts to various conciliatory measures. I knew as a result of the discussions a new subcommittee had been appointed to canvass the entire situation.

Q. As of August 14, you knew, did you not, from the Verbrycke letter, that the Society was considering opposition to GHA?

A. Opposition to GHA as then constituted.

Q. That is right. And by that you mean, under the plan then proposed, group practice on a prepayment basis?

A. I mean a corporation practicing medicine and engaged in the business of insurance illegally. That was my understanding.

Q. Group Health Association, Inc., involving group practice on a prepayment basis.

A. Yes.

Q. You also knew that the Society had issued a list of approved organizations?

A. Yes.

Q. From which GHA had been omitted?

A. I do not recall whether at that time I knew GHA had been omitted, because, as I said, that list came to me in Chicago and meant very little to me.

Q. But it meant enough so that you took it to the office in order to be prepared to answer inquiries concerning GHA?

A. For general purposes. I will not say specifically GHA. It might come in for the others. I was studying the entire situation.

Q. But you took it to the office for the purpose of being prepared to answer inquiries concerning GHA?

A. Or any of them.

In September, 1937 I made inquiry as to what the District Medical Society was doing (Gov. Ex. 190). I learned in the reply (Gov. Ex. 84) that the subcommittee had reported to the Executive Committee that in view of the

violation of the Code of Ethics of the AMA no approval could be given to GHA and also that participation in GHA by any member of the District Medical Society would render him or her subject to disciplinary action by the Society. I saw Gov. Ex. 111 a letter from Dr. Conklin to Dr. West which states that the District Medical Society "is in full accord with the content of the report of the Bureau of Legal Medicine and Legislation of October 2, 1937." The letter also states that the Society recommended that a copy of the report be sent to all members as indicative of the future policies of the Society with respect to combating the activities of Group Health and also with respect to the ethical responsibilities of the District Medical Society.

I prepared my report to the Board of Trustees for the purpose of assisting those who were charged with the duty of publishing, to make a correct statement of facts.

Q. Let me show you Gov. Ex. 181, which is a letter from you to Mr. Hayes dated August 21, 1937, and I call your attention to the last two paragraphs.

A. This is in reference to that publication.

Q. So that your memory may be refreshed on the matter, I invite your attention to this letter addressed by you to Mr. John F. Hayes here in Washington:

"Confidentially, I am preparing an article on the situation and would like to have the latest details.

Say nothing to Conklin or anyone else about my plans for publication."

Now, is it true, Doctor, that as of August 21, 1937, you were writing an article and did intend to have it published?

A. I didn't plan to have it published; I planned to furnish something which could be used.

Q. Did you plan to have it published in the American Medical Association Journal?

A. I planned to submit it in such a form that it might be usable if the editor, secretary and general manager deemed it proper. It was a complete article in itself and might have been published or might not, and it would have been true in either way.

Q. And as a matter of fact, when you were writing it you intended that it should be published?

A. I planned that it should be available for any use to which it was desirable to put it.

Q. And you expected it to be published?

A. No, I didn't expect an article of that length to be published.

Q. You expected it to be edited and published?

A. Edited and published, or not published at all.

Q. You did refer to the article in your letter, Exhibit 184, to Mr. Hayes. Let me refer you to the next to the last paragraph.

A. That is to the same effect.

Q. And which reads: "I enclose a draft of an article which I prepared with a view to publication." Now, is it true that you did prepare this article, this report, with a view to its publication, subject to the conditions which I have just stated, subject to its being edited?

A. Subject to editing and revising.

Q. These two letters state the facts in that connection?

A. Yes, subject to the understanding that I have just stated in connection with them.

Q. As a matter of fact, Dr. Woodward, you prepared this article in the form of a report in order to avoid conflict on your part with the principles of professional ethics of the American Bar Association, did you not?

A. Not at all, because I had no positive knowledge that it was going to be published.

Q. You had no positive knowledge?

A. No, if I was preparing it for publication I should have prepared it in different form.

Q. But it is a fact that you prepared it in the form in which you did to avoid conflict with the ABA Canons of Ethics?

A. As a report for the board of trustees, no. That is one reason why I did not know it would be published.

Q. I wonder if you would just look at this Journal article, Exhibit 294, which as I understand it is your draft of the article, and refer please to pages 27 and 28 of the draft. On page 27 of the draft of the article you wrote as follows, did you not:

"So far as can be learned from the certificate filed by Group Health Association and from its by-laws, no member of the association and no dependent of a member is to have any freedom of choice of his physician: Ob-

viously, this must be so, for with a limited, salaried, full-time medical staff, operating over an area of 750 square miles or more, it would be impossible for each staff member to cover the entire area daily, to satisfy the desires of members scattered over the entire area. It is understood that the association will not object to a member or a dependant of a member being treated at his own expense, by a physician not in the service of the association. Inasmuch as the members of the salaried staff of the association are likely to be looked on by the profession generally in the community as on the outer verge of ethical practice, if not altogether beyond the pale, it is not clear how they are to obtain qualified consultants or procure hospital service for their patients."

That is in your draft of the article, is it not?

A. Yes, it is.

Q. And the identical paragraph appeared in the Journal article?

A. It did.

Q. Now, will you turn to page 46-B of the Journal article, and let me read to you first your draft of the article and then compare it with the language in the article which was published.

"Especially would quality be likely to fail in times of epidemic and of any unusual prevalence of disease, when the limited medical staff of the association would be overworked and could find no relief. In any event, medical service under the association would be likely to be handicapped by difficulty likely to be experienced in obtaining the best consultant service and hospital accommodations. Physicians who sell their services to an organization like Group Health Association for resale to patients are certain to lose professional caste and therefore may be looked on askance when they seek consultance or the right to treat patients in reputable hospitals."

Now, is the language which I have read from your draft identical with the language in the Journal article?

A. It is not.

Q. What is the difference between what I have read and what is written in the Journal article?

A. In the article as published it appears, "physicians who sell their services to an organization like Group Health

for resale to patients are certain to lose professional status."

Q. So that the Journal article changes the word from "caste" to "status"?

A. More than that.

Q. And omits the latter part of the sentence, "and therefore may be looked on askance when they seek consultance or the right to treat patients in reputable hospitals?"

A. That is admitted. I frankly say I omitted that, myself either in the first proof or galley proof, so that it never came to the attention of the public generally. It was concealed in the files of the American Medical Association.

Q. But it was in the report you made to the board of trustees?

A. Yes, it was in that report.

Q. Now will you turn to the last page? Will you read that paragraph relating to population, and the percentage of Government employees compared with the total population in Washington?

"Out of a total population of 486,869 in the District of Columbia, 115,912 are civil employees of the United States Government, and of these, 2,517 are employees of the Federal Home Loan Bank Board and its affiliated agencies. If to these persons all of whom are eligible in Group Health Association, we add their dependants, allowing an average of two dependents for each employee, we have a total of 347,736 persons, out of a total population of 486,869 that the promoters of Group Health Association, according to their certificate of incorporation, seek to withdraw from the ordinary practice of medicine and to cover into a Group Health insurance contract-practice system and treat through physicians hired for that purpose. The effect of the withdrawal from private practice of even one-half that number of persons, all of them able to pay for medical services, will materially disturb medical practice in the District of Columbia and react against public interest."

Now with reference to the last two sentences which I have just read, didn't your original report read as follows:

"The effect of the withdrawal from private practice of even one-half that number of persons, all of whom are able to pay for medical services, would materially diminish

the income of physicians in private practice in the District of Columbia and render it necessary for them to increase their charges or to sacrifice the practices they have built up and go elsewhere. Either event might easily react against public interest."

A. Yes, I wrote that. That was in the report to the board of trustees, but was not published to the medical profession throughout the country, even in the District of Columbia.

Q. But it was in the original draft which you presented to the Board of Trustees?

A. Yes.

I received Gov. Ex. 203 from Mr. Hayes telling me the staff of Group Health. I presumably put it before Dr. West. Dr. West on the same day wrote to Dr. Conklin (Gov. Ex. 114) telling him that two members of the Group Health staff, Drs. Lee and Scandiffio, were members of the AMA. I have never seen Gov. Ex. 62 before.

Q. Didn't you learn shortly after October 29, 1937, that the doctors associated with Group Health Association would become outcasts in the District of Columbia?

A. I don't know of anyone using the term "outcasts." When it comes to a matter of their losing their status in the professional community, that would follow as a matter of course from the violation by them of the principles of ethics which have been in force for a century.

Q. When you say lose their "status in the professional community," you mean in the District Medical Society?

A. Status in the Medical Society.

Q. By that you mean they would lose their membership in the District Medical Society?

A. Unless they could justify their course of conduct.

Q. And if that Society and the American Medical Association determined that Group Health Association was unethical, then they couldn't justify their conduct before it, could they?

A. I can conceive of no way in which the Medical Society of the District of Columbia or the American Medical Association could pass on the status of Group Health Association; it would have to pass on the ethical conduct of the individual member.

Q. Well, the ethics of the members of the staff of GHA?

A. Yes, and only to this extent; that persons on whose ethics they were passing were members of the association who had voluntarily submitted themselves to the American Medical Association and District of Columbia Medical Society by accepting membership therein. They could not pass on, inquire into the ethics of, a doctor who had not voluntarily assumed the obligation to comply with those ethics.

Q. But if a member of the Medical Staff of GHA were a member of the Medical Society of the District of Columbia, then the District Medical Society and the American Medical Association might pass upon his status?

A. It would be a very difficult and hard thing for the American Medical Association to undertake anything of the kind.

Q. Well, let us say the District Medical Society.

A. The District Medical Society might.

Q. And I think your testimony was that that would automatically follow if the District Medical Society believed that association with the staff of Group Health was unethical?

A. Someone would have to take the initiative. That having been done, the case would take the normal course and the procedure usual in the cases of unethical conduct would follow.

Q. You had already taken the initiative and notified Dr. Conklin through Dr. West who were members of the Distrjct Medical Society and who were also members of the American Medical Association?

A. I had not notified him of anything of the sort.

Q. But Dr. West had notified the Society?

A. He may have.

Q. And Dr. West obtained his information from you?

A. As to who were on the staff; I didn't inform him who were members of the District Medical Society and who were not.

Q. All he had to do was to check the District Medical Society directory there, wasn't that all?

A. Yes, his own records.

Q. Dr. Woodward, didn't you understand that the members of the staff of GHA were going to be medical outcasts in the District of Columbia?

A. Not medical outcasts, no.

Q. Weren't you told that?

A. Not that I know of. I don't remember anybody having referred to them as medical outcasts. The reference may have been made, but that is not the usual term.

Q. I show you Exhibit 193 for identification and ask you if this is a letter which you received.

A. Yes, I received that.

Q. And Exhibit 194, which is in evidence, is your reply to that letter, is it not?

A. Yes.

. . . . . .

Q. Dr. Woodward, you learned, did you not, within eight days after Dr. West had notified Dr. Conklin of who the members of the GHA medical staff were that the Society had instituted disciplinary proceedings against the members of GHA, who were also members of the DMS?

A. I learned that such action had been taken, whether within eight days or some longer period I can't remember.

Q. You know that you did learn that such proceedings were instituted against Drs. Lee and Scandiffio?

A. Yes.

Q. Didn't you learn that at the conference on November 6, 1937, attended by yourself, Dr. West, Dr. Leland, and Dr. McGovern, and Dr. Hooe?

A. It is quite possible.

Q. Let me refresh your recollection. Take the last paragraph on the first page and the first paragraph on the second page. I will ask you whether this correctly represents what Dr. Hooe has told you, Dr. West, and Dr. Leland?

"The operations of Group Health Association, Inc., began on Monday last. Two members who contracted with GHA were members of the Medical Society of the District of Columbia and the third had sent in his application, which had been withdrawn within the past ten days. There is nothing to be done about this third member at the present time. The resignations of the other two were received by the secretary of the District Medical Society within the week. A letter was sent to each of them asking him to appear before the Compensation, Contract, and Industrial Medicine Committee. They did not appear, but the committee received a communication from one of them. The com-

mittee unanimously recommended to the Society that disciplinary measures be taken,"
et cetera.
Now do you recall that?

A. I do not recall that as having occurred at that conference, but if it is stated there as having occurred, I know it did, and I would be inclined to say it did.

Q. Now, let me refresh your recollection on this point:

"Dr. Woodward raised the question as to whether notice to these members had been given and stressed the necessity for following strictly the procedure under the constitution of the Medical Society of the District of Columbia."

Do you think you said that?

A. I am quite sure that I said that, if it is there. If it was a question of disciplinary action I am certain that I advised, strict, full compliance with all the requirements of the constitution of the Society.

Q. You advised that any disciplinary proceedings taken should be handled in a proper way?

A. Yes.

Q. And did you at that conference advise further discussion and that nothing further be done until the matter had been gone into in detail?

A. Yes.

Q. And was it gone into in detail?

A. Do you mean did I instruct them as to that detail?

Q. Yes.

A. I don't recall discussing it with them further.

Q. But you do recall that you advised that these disciplinary proceedings be carried on only in strict compliance with the requirements of the Medical Society constitution?

A. Yes, and according to the proper requirements of law also. I have advised too many boards and committees not to have told them that.

Q. And you knew those proceedings were to be against Drs. Lee and Scandiffio?

A. If those are the men in those statements annexed, if they were named there, then they are the parties.

Q. Those names were not indicated in this document, but you knew they were Drs. Lee and Scandiffio?

A. Yes.

Q. I think you have already testified that as early as sometime in June, 1937, you knew from Dr. Verbrycke's letter to Dr. McGovern, a copy of which you received, that one of the plans which Dr. Verbrycke had suggested was that these doctors be excluded from the medical staffs of hospitals?

A. There was something to that effect in a letter written by Dr. Verbrycke to someone, Dr. McGovern, I believe.

Q. And copy of which you received?

A. Yes.

Q. And isn't it true that the hospital matter was also referred to at the November 6 meeting?

A. Probably; I think something has been read from the minutes concerning the matter.

Q. I am talking about the conference in Chicago.

A. I don't recall whether at that conference the matter of hospitals did come up.

Q. Let me refer you to page 7 of the memorandum, which is Exhibit 117, reading as follows:

"Dr. Hooe: In the matter of H.O.L.C., what is your future program?

"Dr. West: It is just exactly the same as it has been all the time. We shall continue fighting it in every way we can. We are going to get all the help we can,"

and that they are going to continue the fight until otherwise instructed.

"Dr. Hooe: The Executive Committee recommended that a letter be addressed to the Medical Boards of the various hospital boards in Washington calling attention to the H.O.L.C. and insisting that the hospitals take cognizance of the situation."

Do you recall Dr. Hooe stating that?

A. I don't recall, but if it is there I will say it occurred.

Q. And in reply to the question expressing some doubt as to the cooperation by the hospital did not Dr. Hooe say: "Is it not, in your opinion, most reasonable that the hospitals should acquiesce," et cetera, but expressing some doubt as to whether they would? Whereupon there was some discussion as to whether or not legislation might not be resorted to; and concluding with the information that all the civilian hospitals in Washington except one, probably one had fallen into line, "which was very gratifying."

Now, is it your testimony, concerning the last few remarks, whether those matters were discussed?

A. The last part I don't recall; I do recall in a general way the discussion with reference to hospitals and also with regard to the legislation or the fact that they might arouse an attempt to get some legislation.

Q. Is it also true that you recall that Dr. Hooe stated they had met on Sunday night, that was the night before going to Chicago, and that all the civilian hospitals had fallen in line? Did he say that?

A. I do not know.

Q. Do you think he said that?

A. I have no thought on the subject.

Q. But if it appears here that he did so state, you would believe it?

A. That or something to that effect.

I attended the meeting of the District Medical Society on November 11, 1937. I don't remember anything of the kind that "Dr. Yater was of the opinion that the hospitals should be contacted and assurances should be given that no member would be allowed to practice there if he is a member of the staff of Group Health Association." I don't mean to say by that that it wasn't said. I don't recall the report of Dr. Warfield made at the meeting of April 6, 1938. To ask me to remember that far back is not reasonable. I told Dr. Verbrycke in my opinion Group Health was unlawful and it may be per se unethical.

Q. Dr. Woodward, just one other question: Didn't you on December 15, 1937, write Dr. Neill a letter and ask him who was leading the forces of the Medical Society of the District of Columbia in their fight on federal-subsidized practice of medicine and insurance by lay groups in the District of Columbia and adjacent groups.

A. I did.

Q. Didn't you write to him on December 22, after you had received a reply, describing the activities of the Society, and say:

"I cannot conceive of its being the function of any public relations counsel to do so unless he is a member of the organization and high up in its ranks"?

A. I did.

Q. And didn't you write, "Of course, your counsel must lead the fight in so far as is involved its legal factors, your

public relations counsel may lead the fight in so far as refers to publicity and relative matters. But whole leadership must devolve on officers and agents of the Medical Society of the District of Columbia, who in the end must be responsible to the Society even for the activities of counsel and public relations counsel."

A. I did. That is in my letter.

Q. There is no question about that?

A. No.

Redirect examination:

I received no advice from Dr. West or any member of the board of trustees of the AMA as to what advice to give the District Medical Society. The only advice I remember giving was that they consult legal counsel and see whether the District Attorney, the Corporation Counsel, the Board of Licensure or the Insurance Commissioner would act. The AMA wasn't involved in any disciplinary proceedings of the District Medical Society. I had no jurisdiction in the matter and the jurisdiction of the AMA was vested in its Judicial Council and the House of Delegates and was confined to appeals on matters of law. I never counseled the District Society with reference to the Washington hospitals. The only jurisdiction the AMA had over the Washington hospitals was that voluntarily vested in it by the hospitals seeking approval for internships and residencies. I have no information of anything that Dr. West might have done other than authorizing the editing of the article I wrote.

Recross-examination:

Dr. West reported to the Board of Trustees of the AMA that the AMA had done everything it could to combat the movement on the basis of the evidence that it was contrary to the policy of the House of Delegates.

I may have told the District Medical Society on April 6 that if there was anything the AMA could do to help the local Society I hoped it would feel free to call on the AMA for such help as we know it is a national fight but we are with you.

Redirect examination:

We brought the matter to the attention as widely as we could of the members of the American Medical Association

scattered throughout the United States, because the opposition, if there was opposition to the national development of Group Health, Inc., must come from the local organization; the proposal would be a proposal about a Group Health, Inc., to set up an agency in some state under this charter. We wouldn't go into a state and oppose it there; the local people would have to do that.

Q. Did you, as a matter of fact, do anything further than the publication of the article?

A. No, other than writing to some members of the Senate and other officials for information.

The defendants then stated to the Court that the illegality of Group Health and of the Home Owners Loan Corporation payment of $40,000 to Group Health, the contract between Group Health and the Home Owners Loan Corporation under which Group Health sold $40,000 worth of medical services to the Home Owners Loan Corporation, the actual payment of this $40,000, by the Home Owners Loan Corporation; the economic unsoundness of Group Health, the illegality of the operations of Group Health, the ruling of various public law enforcing officials and several Congressional committees that Group Health was operating illegally, the opinion of Justice Bailey in a declaratory judgment suit, the necessity for revamping the by-laws of Group Health to overcome apparent illegality, the order of the United States Attorney and the Corporation Counsel to Group Health to cease its operations because contrary to law, and the unprofessional advertising, soliciting and coercion of Group Health and the subsidized, unethical and illegal character of the practice of Group Health were factual issues in the case, were widely discussed in the evidence of the Government, were known to the defendants, were believed by the defendants, and were matters and circumstances tending to aid the Court and jury in determining the truth and the consequences and reasonableness of the acts charged to the defendants, and the intent of the defendants in doing those acts, and that all the defendants did was to engage in lawful argument and persuasion. Defendants offered to prove said facts, and then made the following formal offer of proof:

Defendants' Offer of Proof

"On the question of the illegality of Group Health Association, Inc., and the receipt by it from Home Owners Loan

Corporation of $40,000 illegally, the defendants offer to prove as facts and circumstances known to these defendants during the times herein involved:

1—The charter of Group Health Association, Inc., and the amendments thereto which are contained in a stipulation herein.

2—The By-laws of Group Health Association, Inc., and amendments thereto which were in effect during the period of the indictment and which are contained in a stipulation herein.

3—The facts known to these defendants pertaining to the actual operations of Group Health Association, Inc., which the defendants say tend to show that Group Health Association, Inc., was a corporation practicing medicine contrary to law and engaged in the business of insurance contrary to law. The said facts will show among other things the following:

(a) That Group Health Association, Inc., entered into contract with Home Owners Loan Corporation wherein it offered as a corporation to render and deliver to Home Owners Loan Corporation certain medical services therein described for a consideration of $40,000.00.

(b) That Group Health Association, Inc., as a corporation contracted with its members to furnish them medical service, and that Group Health Association, Inc., did furnish medical service to its members.

(c) That Group Health Association, Inc., as a corporation employed doctors to work in a clinic, rented and operated by Group Health Association, Inc., there to treat and render medical service to the members of Group Health Association, Inc., pursuant to the contract between Group Health Association, Inc., and its members.

(d) That the trustees of Group Health Association, Inc., together with the lay administrator and other lay employees of Group Health Association, Inc., dominated and directed the rendering of medical service by Group Health Association to its members.

(e) That no doctor could be employed or discharged by Group Health Association, Inc., without the consent and approval of the board of trustees, all of whom were laymen.

(f) That Group Health Association, Inc., as a corporation, was practicing medicine and was not a broker which brought together the members of Group Health Association and the doctors who rendered medical service to them.

4—That Group Health Association, Inc., was subsidized by Home Owners Loan Corporation and received from Home Owners Loan Corporation money and other things of value belonging to the United States, contrary to law.

5—That Group Health Association, Inc., entered into a contract with Home Owners Loan Corporation wherein it promised to perform certain medical service for Home Owners Loan Corporation and, in return, received money and things of value belonging to the United States, contrary to law.

6—The members of Group Health Association, Inc., assigned to Group Health Association portions of their salaries, due or to become due, from Home Owners Loan Corporation, contrary to law, and that deductions were made from the said salaries by Home Owners Loan Corporation and paid to Group Health Association, Inc., contrary to law.

7—Resolutions were passed by Home Owners Loan Corporation authorizing contract and amended contract with Group Health Association, Inc., for the furnishing of medical service by Group Health Association to Home Owners Loan Corporation, all without authority of law. That resolutions were passed by Home Owners Loan Corporation approving By-Laws of Group Health Association, Inc., which in substance and in effect provide that said Group Health Association, Inc., should at all times have on its board of trustees at least two members thereof who were designated and appointed by Home Owners Loan Corporation, all without authority of law.

8—That Home Owners Loan Corporation received legal opinion from its attorneys in substance holding and conceding that Group Health Association, Inc., was engaged in the insurance business, contrary to law, and engaged in the practice of medicine, contrary to law, unless and until its By-laws were changed, and as a result thereof said By-laws were so changed, and that these alleged conditions, or part thereof, existed until at least May 2, 1938.

9—That the Acting Comptroller General of the United States held and found that the payments by Home Owners Loan Corporation to Group Health Association were made and incurred without authority of law to the knowledge of the defendants. That said Acting Comptroller General also held and found that the aforesaid contract between Group Health Association, Inc., and Home Owners Loan Corporation was a contract for the sale of medical service, contrary to law to the knowledge of the defendants.

10—That a duly authorized proper committee of the House of Representatives of the United States held and found that payments by Home Owners Loan Corporation to Group Health Association, Inc., were an illegal diversion of the money of the United States, to the knowledge of the defendants.

11—That the United States District Attorney of the District of Columbia and the Corporation Counsel of the District of Columbia held and found that the operations of Group Health Association, Inc., were contrary to law up to the time of the entry of the decree in Group Health Association, Inc., vs. Moor, et al., to the knowledge of the defendants.

12—That several attorneys consulted by defendants advised that the operation of Group Health Association, Inc., was contrary to law, and defendants so believed.

13—That several attorneys consulted by defendants advised that Chapter 9, Article IV, section 3, of the constitution of the Medical Society of the District of Columbia was a legal provision, and defendants so believed.

14—That several attorneys consulted by defendants advised that the Principles of Ethics of the American Medical Association and all thereof were legal, and defendants so believed.

15—That several attorneys consulted by defendants advised that they had a legal right to enforce Chapter 9, Article IV, section 5, of the constitution of the Medical Society of the District of Columbia, and defendants so believed.

16—That all of defendants' acts and doings were for the purpose of advancing their own interest and to protect

their own society association rules of ethics and method of distributing medical service and to repel an assault on the same by Group Health Association, Inc., as distinguished from the purposes of restraint as alleged in the indictment.

17—That the defendants believed that the $40,000.00 and other things of value paid by Home Owners Loan Corporation to Group Health Association, Inc., was an illegal diversion of the money of the United States.

18—That belief on the part of the defendants that Group Health Association, Inc., was illegally engaged in the practice of medicine, had received public funds unlawfully, and illegally engaged in operating an insurance company, was in part the basis for the following acts of defendants:

(a) Enforcement of Chapter 9, Article IV, section 5, of the constitution of the Medical Society of the District of Columbia, by disciplinary proceedings.

(b) The issuance of the so-called 'white list.'

(c) Refusal, if any, to consult with the doctors employed by Group Health Association, Inc.

(d) In enacting and distributing a resolution of the Medical Society of the District of Columbia dated December 1, 1937.

(e) The correspondence conducted between the defendants and between defendants and third persons relating to Group Health Association, Inc.

(f) Discussions, remarks, motions, and other pertinent acts of defendants, relative to Group Health Association, Inc., its doctors, memberships and operations.

19—That because of the belief of the defendants in the illegality of the operation of Group Health Association, Inc., and the illegality of the payment of certain moneys by Home Owners Loan Corporation to Group Health Association, Inc., the acts and doings of defendants in the premises were reasonable argument and persuasion, or reasonable regulation of professional practice.

20—That the illegality or belief in the illegality of Group Health Association, Inc., brought into operation Chapter 9, Article IV, section 5, of the constitution of the Medical Society of the District of Columbia. The said section 5 is valid and it was and is lawful for the Medical Society

CORRECTION AND AMPLIFICATION OF RECORD ON APPEAL

In the United States Court of Appeals for the District of Columbia

APRIL TERM, 1941—SPECIAL CALENDAR

No. 7929

AMERICAN MEDICAL ASSOCIATION, A CORPORATION, APPELLANT

vs.

UNITED STATES OF AMERICA, APPELLEE

No. 7930

THE MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA, A CORPORATION, APPELLANT

vs.

UNITED STATES OF AMERICA, APPELLEE

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

In the United States Court of Appeals for the District of Columbia

APRIL TERM, 1941

No. 7929

AMERICAN MEDICAL ASSOCIATION, A CORPORATION, APPELLANT

vs.

UNITED STATES OF AMERICA, APPELLEE

No. 7930

THE MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA, A CORPORATION, APPELLANT

vs.

UNITED STATES OF AMERICA, APPELLEE

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

(1)

443283—42

DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Criminal No. 63221

UNITED STATES OF AMERICA, PLAINTIFF

vs.

AMERICAN MEDICAL ASSOCIATION, A CORPORATION, MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA, A CORPORATION, DEFENDANTS

I, Charles E. Stewart, Clerk of the District Court of the United States for the District of Columbia, do hereby certify the annexed to be true and correct copies of the original order signed in the above-entitled cause on the 5th day of February 1942, and pages 3651 to 3667, inclusive, of Volume 27 of the transcript of proceedings filed in the said cause on the same day, said writings to constitute a supplemental record on appeal.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, this 6th day of February 1942.

[SEAL] CHARLES E. STEWART, *Clerk.*

By: H. M. HULL,
Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Criminal No. 63221

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

AMERICAN MEDICAL ASSOCIATION, A CORPORATION, MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA, A CORPORATION, DEFENDANTS

Order

Upon the foregoing petition it is this 5th day of February, 1942, by the District Court of the United States for the District of Columbia,

ORDERED that the said omission in the Record on Appeal in this case shall be corrected to include therein, following the first paragraph upon page 945 thereof, that portion of the reporters transcript of proceedings at the trial of this case contained in pages 3651 to 3667, inclusive, thereof, and that the Clerk be, and he is hereby, authorized and directed to certify and transmit to the United States Court of Appeals for the District of Columbia a supplemental record containing said portions of the said transcript.

JAMES M. PROCTOR
District Judge

Appellants by their attorneys object to the aforegoing order and except thereto,

JAMES M. PROCTOR
District Judge

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Criminal No. 63221

UNITED STATES OF AMERICA
v.
AMERICAN MEDICAL ASSOCIATION ET AL.

WASHINGTON, D. C., *Friday, March 14, 1941.*

The trial of the above-entitled cause was resumed before Associate Justice James M. Proctor, in Criminal Division No. 2, at 10 o'clock a. m., pursuant to adjournment on Thursday, March 13, 1941.

APPEARANCES:

On behalf of the United States:

John H. Lewin, Special Assistant to the Attorney General.
Grant W. Kelleher, Special Assistant to the Attorney General.
George B. Haddock, Special Attorney, Department of Justice.
Edward J. Hickey, Jr., Special Attorney, Department of Justice.
Walton Allen, Special Attorney, Department of Justice.
Compton Timberlake, Special Attorney, Department of Justice.
Marvin J. Coles, Special Attorney, Department of Justice.

On behalf of defendants Medical Society of the District of Columbia, Washington Academy of Surgery, Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard Gregg Custis, William Dick Cutter, Robert Arthur Hooe, Thomas Ernest Mattingly, Leon Alphonse Martel, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Wallace Mason Yater and Joseph Rogers Young:

Charles S. Baker,
William E. Leahy,
Warren Magee.

On behalf of defendants American Medical Association, Harris County Medical Society, Morris Fishbein, Rosco Genung Leland, Olin West, and William Creighton Woodward:

Edward M. Burke,
Seth W. Richardson,
Adrien Busick.

On behalf of defendant Prentiss Willson:
John E. Laskey.

(Counsel for both sides approached the bench and conferred with the court, which conference was not reported. At the conclusion of the conference, counsel resumed their places at the trial table and the trial proceeded as follows:)

The COURT. Gentlemen, I have received your papers, for which I thank you. I see they involve a great deal of work, and I think they will be very helpful. I have only had an opportunity to read them over briefly, and there are certain things that I want to be sure of. Take, for instance, your offer of proof. You speak first of the charter of the Group Health Association, Inc. I was under the impression that that was in.

Mr. LEAHY. I think it is in, if your Honor please.

The COURT. We do not want to be uncertain about it.

Mr. KELLEHER. No; it is in. It is stipulated.

Mr. LEAHY. Yes. I think the stipulation is in, too.

Mr. KELLEHER. The by-laws are also in, your Honor.

The COURT. Of course as to "The facts known to these defendants," involves their own testimony, I assume, to a large extent.

Mr. LEWIN. That is more specifically described in (a) and (e).

The COURT. Yes; I see it goes into details. That is predicated, of course, upon documentary things as well as other matters.

Another thing I wish to ask: Is the contract between the Home Owners Loan Corporation and Group Health Association, Inc. in evidence?

Mr. LEAHY. Not yet, your Honor.

Mr. KELLEHER. It is not, your Honor.

The COURT. I see no reason why that may not go in; I mean, for my purposes. Of course, depending upon my ruling, it will either have to be treated as of no effect or treated as of effect, whatever my ruling may be.

Mr. LEWIN. How about having it annexed to the proffer?

The COURT. I would like to have it in evidence. I cannot control its use, but according to the opinion, as I read it, I can

control its use just as I can that of the contract. So I want that in.

Mr. LEWIN. Which item is that, your Honor?

The COURT. It is referred to in (a) of paragraph 3. You have it available, I assume?

Mr. KELLEHER. They have subpoenaed it, I believe, your Honor.

The COURT. It should be in.

Mr. BURKE. There is an amendment to that contract.

The COURT. I want the whole thing in, any features of written contracts or contractual relations between those two organizations.

Mr. LEWIN. It goes in without any of this characterization, though?

The COURT. Yes; just the papers themselves.

Mr. KELLEHER. (a) is under the heading of the facts known to the defendant. That is in.

The COURT. That would depend upon their own testimony. Then, of course, I want anything that shows the contract of membership, the membership rights of the doctors of Group Health.

Mr. KELLEHER. I think that is in the by-laws.

Mr. LEWIN. That is the application for membership.

The COURT. I assume it is covered by the by-laws.

Mr. LEWIN. Yes; I think it is.

Mr. LEAHY. Yes, your Honor; and there are some other matters explaining the by-laws, explaining the reason for their amendment also.

Mr. LEWIN. I do not believe we want to go into that.

The COURT. I have not reached that. Let us take it up in order, because it is confusing otherwise.

Mr. KELLEHER. Your Honor understands that there is no formal contract with the members?

The COURT. It is a contract that you reached through the by-laws of the organization?

Mr. KELLEHER. Yes.

The COURT. And of course the charter may form a part of it. Are not some of the contracts with the doctors in?

Mr. LEAHY. I think they are, your Honor.

The COURT. I know Scandiffio's and Lee's are in. I suppose they are typical, are they not?

Mr. LEWIN. I do not believe there were ever any written contracts except those.

The COURT. If there are any, they certainly ought to be in.

Mr. KELLEHER. They are, your Honor.

Mr. LEAHY. Scandiffio's and Lee's contracts?

Mr. KELLEHER. Yes.

Mr. LEAHY. Submitted and unsigned.

The COURT. There was also a copy of it sent to the American Medical Association.

Mr. LEWIN. Yes; and I believe it was also involved in the proceedings before Judge Bailey.

The COURT. It is in, I am sure. Please keep your notes of these corrections.

This (d) would be covered by the papers which we have made reference to.

Mr. LEAHY. Supplemented by testimony in explanation of the by-laws which are already in.

The COURT. I do not assume you mean that you should show, for instance, that Mr. Penniman is the president of the Association, and when John Jones is being treated by Dr. Scandiffio he assumed in any wise to instruct Scandiffio as to the medical service or attention that he should render to Mr. John Jones.

Mr. LEAHY. Not quite so direct as that, your Honor.

The COURT. It is just generally?

Mr. LEAHY. Yes, sir.

The COURT. The power of administration.

Mr. LEAHY. Yes.

Mr. LEWIN. Tied up with the power to make the contract or to terminate it.

Mr. RICHARDSON. It is further than that, because there will be specific testimony as to interference.

Mr. LEWIN. Don't you think, then, that the proffer ought to be a little more specific?

The COURT. Yes. It is now a little vague. I would assume in reading it hurriedly, and as I read it now, that you merely have reference to administrative supervision.

Mr. LEAHY. There will not be any testimony showing that anyone stood over a doctor and said, "You do this or that."

The COURT. There is nothing to suggest that in any given case of rendition of medical care by a doctor, that a member, or any lay officer of the Association attempted in any wise to direct the medical officer or doctor as to how he should render medical treatment?

Mr. LEAHY. No, sir. We have no such testimony as that.

Mr. LEWIN. I think it is all right except for any implications to be drawn from the word "discharged." There may be some attempt to torture that.

The COURT. That will be revealed in the by-laws and by the contract.

Mr. LEWIN. Yes—the power to contract or to terminate the contract.

The COURT. I say, that will be controlled by the papers that are in. That is pretty much a conclusion.

Mr. LEAHY. Yes, pretty much.

Mr. LEWIN. I have marked it as such.

Mr. RICHARDSON. There are going to be some facts by which we arrive at the conclusion.

Mr. KELLEHER. I am wondering if there is anything additional which they intend to offer other than what we have already proceeded to discuss.

The COURT. I assume not.

Mr. LEWIN. Embraced in (a) to (e).

The COURT. Now, No. 4 relates to the contract between these two organizations.

Mr. LEAHY. That is right, your Honor.

The COURT. And I assume the same as to five?

Mr. LEAHY. Yes, your Honor.

The COURT. And 6?

Mr. LEAHY. Yes, your Honor.

The COURT. Are these regulations, 7 and 8, in?

Mr. LEAHY. No, your Honor.

The COURT. Well, put them in. They have been testified to by Mr. Penniman.

Mr. LEAHY. Yes, your Honor.

The COURT. The substance of them, I know; both Penniman and Kirkpatrick.

Mr. LEAHY. I think there is no point about them except materiality.

The COURT. Well, put them in and we will have the whole facts.

No. 8 I do not think needs to be supported. It is very clear. I mean, it does not need to be supported by any documentary evidence.

Mr. LEAHY. There is some already identified on cross-examination by Mr. Kirkpatrick.

Mr. KELLEHER. I am afraid I do not understand.

Mr. LEAHY. Do you recall the letter that I mentioned but did not introduce into evidence? There are some letters from the counsel of the Association.

Mr. KELLEHER. This is the H. O. L. C., your Honor, and I do not believe it is in evidence. I may be in error about that, but I don't believe it is.

The COURT. The statement is clear enough. I can rule on that without reading the opinion.

Mr. KELLEHER. There is no ruling on that at this time?

The COURT. No. I am just accepting that as an offer. The same with 9; the same with reference to 10, because if I should hold them material, then they will all be admitted. The statement is sufficient. The same with respect to 11; the same with respect to 12, 13, 14 and 15. Sixteen need not be amplified. The offer is clear enough.

Mr. LEWIN. Might I suggest that when it is presented, however, in piecemeal as the evidence comes along, it is a pretty difficult thing to analyze. You get to talking about purposes, intents and motives and that sort of thing.

The COURT. All this goes to the question of belief upon their part as to the justice and legality of their rights, that they believed they were legal, or something like that. It supports an honest belief. The question is whether such an honest belief is admissible.

Mr. RICHARDSON. An honest belief with reference to their acts.

The COURT. It all goes to support an honest belief upon their part which motivated them.

Mr. LEWIN. Your Honor understands it as a proffer of motive?

The COURT. It is a proffer to prove the thing.

Mr. LEWIN. But it is a proffer of motive. Is not that the way your Honor understands it?

The COURT. I am not going to say whether it is motive or intent at the moment. I am not using those words technically.

Mr. LEWIN. But that is the point that worries me a little bit.

The COURT. I will be able to distinguish it later.

Of course (a) of 18 is in. That is part of the Government's case.

Mr. RICHARDSON. Did you pass 17, your Honor?

The COURT. There is nothing there that needs to be amplified. All these matters necessarily depend upon the main question raised by 18, as to belief.

Mr. KELLEHER. That is right.

The COURT. And the things referred to from (a) to (f) are all in evidence through the Government's testimony, I assume.

Mr. LEAHY. Yes, your Honor.

Mr. LEWIN. That is true.

I do not know what "basis" means, exactly. That is in the same offer, No. 18—that this belief was the basis for those things. There, again, we may get into this confusion of intent and motive which may ruin us.

The COURT. I am not going to get confused about it, unless you confuse me. It is not a new question with me at all.

Mr. LEWIN. Oh, I am sure of that. I did not mean to suggest that for a moment.

The COURT. I see it worries you, but I think you may rest upon my distinguishing between them.

Mr. KELLEHER. Nineteen is a conclusion, is it not?

The COURT. Yes. That is upon the same basis as some of the previous ones. The constitutional provision referred to in paragraph 20 I assume is in evidence.

Mr. LEAHY. Yes, your Honor.

Mr. LEWIN. There, again, that is a conclusion of law, if your Honor please.

The COURT. Those are questions of law.

The rest is argumentative, I assume.

Mr. LEWIN. Does your Honor understand, then, that the only one of these upon which additional testimony will be offered will be (d) of paragraph 3?

Mr. KELLEHER. No. They won't offer any on that.

Mr. LEWIN. They said they would.

Mr. KELLEHER. As I understood it, (d) was a conclusion to be drawn from the documentary evidence—

Mr. LEWIN. Mr. Richardson said they would have some testimony, and his Honor asked a little about the character of the testimony.

The COURT. I think it was finally agreed between counsel that that was really based upon inferences to be drawn from the documentary evidence.

Mr. RICHARDSON. What is that, your Honor?

The COURT. Paragraph (d) of 3.

Mr. LEAHY. That may be supplemented or explained by testimony.

Mr. KELLEHER. I was under the impression that Mr. Leahy said it was purely a conclusion. Your Honor asked if there was any such evidence direct to the point of actual instruction as to the method of treatment of a patient, and he said they did not have that.

Mr. RICHARDSON. We do expect to show instructions by the board of trustees to their doctors that limited their activity.

Mr. KELLEHER. That limited the extent?

Mr. RICHARDSON. Yes.

Mr. LEWIN. Then I think the proffer ought to be more specific about that, and it ought to be limited.

Mr. LEAHY. What we hoped to be able to do was to acquaint your Honor with the general character or type of testimony; but of course as a witness is on the stand an answer might elicit another question which, in turn, would bring out some other and different testimony. But it will be within that field or range which is indicated in the proffer.

Mr. LEWIN. I am not suggesting that counsel would be bound if something extraordinary happens in the course of the trial, if some new evidence develops that none of us knows about; but if he knows now the character of that testimony I think it ought to be stated so that it can be dealt with specifically. Mr. Richardson has been kind enough to state one type of evidence. Was that in writing?

Mr. RICHARDSON. No.

Mr. LEWIN. Oral instructions.

Mr. RICHARDSON. Here is a board with dominant figures on it, and their activities depended upon their budget, the amendment of the by-laws and upon the change in their attitude; and what we propose to show is, by general testimony, what happened between the board and the people in charge of the medical service.

The COURT. Let me ask you this. Do you intend to show that the Group Health Association, contrary to its contracts with its members, infringed upon or impaired those contracts in the service which it rendered?

Mr. RICHARDSON. The only contract, so-called, as I understand it, would be that indicated by the by-laws, plus the application. We have been told that the fact is that there was a violation of those contracts.

The COURT. I will simply say this to counsel, that if upon reflection you see that your offer involves any such situation as that, please advise me as quickly as you can.

Mr. LEAHY. Yes, your Honor.

The COURT. If, of course, as I have assumed, it is predicated upon inferences to be drawn from the legal control that was given to the board of trustees and officers over the conduct of the Association, if merely inferences are to be drawn from those things, then there is no need for any supplemental offer; but if it goes beyond that and shows that contrary to and outside of the authority and duties laid down in these instruments, these corporate instruments, the officers in fact did assume to impose their will upon the doctors to the point which amounted to actual interference in a particular case, then I want to know that.

Mr. LEWIN. And I suppose counsel for the Government would get the information at the same time?

The COURT. It goes beyond that, because it is not a question of whether they did it under this offer, but whether that was known to the defendants.

I think that clears the situation up. My idea was to clarify these things that we have and then permit you gentlemen to add anything new in the way of argument that occurs to you, in the hope that I might dispose of this by 1:30 and go on with the evidence. But now the suggestion has been made by counsel for the Government that they would like a little time to consider these things more fully and that I ought to give them until 1:30 to do it. If I do that I will be in no position, of course, to dispose of it, because I do not want to have my mind reaching conclusions until any argument of counsel is completed. In other words, I want the views all before me before I attempt to consider the question. I do not want to lose time. It is getting to be a matter of anxiety to me, the way the case is being continued. Whether we would gain time by that or not I do not know.

Mr. LEWIN. What would your Honor think of this suggestion—adjourning for three quarters of an hour to let us get our thoughts in order?

The COURT. But that does not give me much time to think things over. It takes you gentlemen a little time to think, and it takes me a little time to think, too. The matter has been pretty well argued yesterday and supplemented by briefs, and I understand the points pretty well.

Mr. LEWIN. Let us submit it without argument, then.

Mr. LEAHY. I really do not know just where we are. Did you want time to look over something?

Mr. LEWIN. Yes. If you are going to make an argument on this thing, I would like to prepare myself to make an argument in answer to it.

The COURT. Let me ask defense counsel this, without scaring you. I have no conclusions at all at the present moment about it. If I should rule against you, would you be ready to go on on the basis of such a ruling?

Mr. LEAHY. Would your Honor indicate in respect to what points?

The COURT. With respect to the point of legality and belief, both of those questions.

Mr. LEAHY. Of course I would try to do the best I could. It would be pretty difficult, if your Honor please, and I should like to be heard on that question.

The COURT. Are you in position to argue that?

Mr. LEAHY. Yes; I will argue it now.

The COURT. You are, too, are you not?

Mr. LEWIN. I will be prepared to go on, I think.

Mr. RICHARDSON. We did not finish our arguments yesterday.

The COURT. No; the arguments were cut short yesterday.

Mr. LEAHY. If Mr. Lewin would like some time, subject to your Honor's own discretion in the matter, I do not want to object, because I know these questions come up, on both sides.

The COURT. If we do not go on, and I allow the decision to go over until Monday, you will be ready at that time to proceed?

Mr. LEAHY. Oh, yes.

The COURT. You have got to anticipate the decision either way.

Mr. LEAHY. Yes. I will not delay the court. We will be ready.

Mr. LEWIN. I do not want to be in the position of appearing to want delay, because I am really not in that position; but how would you feel about limiting the arguments so that you have plenty of time for the decision?

The COURT. I might give you a half hour apiece. Too much argument confuses me. I can digest just so much of it.

Mr. LEWIN. Suppose we start in at 1:30 and had an hour's argument and then your Honor took the rest of the day to consider these questions and gave us the decision today?

The COURT. It is not going to inconvenience you, because they are putting in their case now.

Mr. LEWIN. No; I was suggesting it from their point of view.

The COURT. Mr. Leahy says they will be ready.

Mr. LEWIN. I thought he said he had to have more time.

The COURT. They will have time to prepare themselves to meet the decision, whichever way it goes. I think on both sides you are entitled to a little further argument. I cut the defense counsel off, or they were cut off yesterday, by reason of developments. They had some ten or fifteen minutes left. Mr. Leahy was about to speak, I believe.

Mr. LEAHY. Yes, your Honor.

The COURT. And I should like to go on now so that I shall not have to come back here. When I have an important question to decide I like to get the argument over with and have time to think.

Mr. LEAHY. May I have about five minutes to step up to the Bar library?

The COURT. Yes. Don't you think you can meet the situation?

Mr. LEWIN. I will if your Honor wants me to.

The COURT. Your argument may not be quite as perfect in diction, and so forth, but I am sure you have the thought well in hand.

Mr. LEWIN. I feel a little bit unprepared, in view of this new development here.

The COURT. If it will help you any, I will give you until 11 o'clock.

Mr. LEWIN. I think that is fine. Would your Honor suggest the question or point you would care to hear argument on? Or don't you feel you would care to do that? Then we can narrow our endeavors.

The COURT. I do not want any repetition of what occurred yesterday.

Mr. KELLEHER. Would your Honor like to hear argument on legality of the contract and on the binding effect of the decision of Mr. Justice Bailey?

The COURT. You covered those points yesterday.

Mr. KELLEHER. I beg your Honor's pardon; I do not mean to contradict you, but I believe Mr. Lewin argued yesterday mainly that even if it were illegal it was not an issue in this case. We also take the position that the grant was a perfectly legal grant.

The COURT. I will not indicate to you what your argument shall be. I have indicated it to you in going over this paper, mentioning the things that concern me, and you have those general questions. I hesitate to allow my mind to reach any hasty conclusion. I would rather keep my mind open. I think it would be only fair if you want to supplement what you said yesterday, and I will give you an opportunity to do that before they speak. I think that would only be fair. If you find anything new that you want to discuss, then I think it would be better for you to lay that before me first, so that counsel will be in position to answer. I will give you until 11 o'clock. I expect to hold you to another hour. You have had your 30 minutes; you have had 30 minutes as against 20 minutes for the defendants, so far. I will add another hour to the argument. You get 20 minutes and they get 40 minutes.

(Thereupon an informal recess was taken until 11 o'clock a. m., at the conclusion of which the following proceedings took place:)

Mr. KELLEHER. Your Honor, as I understand it, we have 25 minutes and counsel for the other side have 35 minutes?

Mr. LEAHY. No—40 and 20.

The COURT. Don't waste any of it.

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of the District of Columbia to refuse to approve a contract between one of its members and a corporation illegally practicing medicine, or which it reasonably thinks is illegally practicing medicine. If this were not true, the Medical Society of the District of Columbia would be required to approve a contract between one of its members and a corporation illegally practicing medicine. The result of such an approval would subject the doctor in question and the Medical Society to a prosecution for violation of a law. The action of the Medical Society of the District of Columbia in refusing to approve such a contract is not evidence of a conspiracy in restraint of Group Health Association, Inc., but directly an effort to prevent its members from contracting with a corporation illegally practicing medicine. If the Medical Society of the District of Columbia cannot so enforce the provisions of its constitution it will be destroyed."

The Government objected to the receipt of any evidence on the issues described on the ground that such matters were incompetent, irrelevant, and immaterial; that the illegality of Group Health, the fact that its practice violated the principles of ethics of the defendants, that it was subsidized by the Government, or that these facts were believed by the defendants and that government officials such as the United States Attorney, the Corporation Counsel, the investigating committees of the House of Representatives and Senate of the United States, the Comptroller General of the United States had so ruled and publicly announced their rulings, and that legal proceedings were instituted for the purpose of having the legality of Group Health and its operations determined, were all incompetent, irrelevant, and immaterial.

The Court ruled that none of the evidence described in the offer of proof of the defendants was admissible upon any of the grounds urged, sustained the objections of the Government, refused to receive any evidence of the character described in the offer and ruled as follows:

"The immediate question involves admissibility of certain evidence set forth in defendants' offer of proof. By understanding between court and counsel the offer covers in detail a broad range of evidence. In connection with evidence already in, it forms the basis for defendants' claim that Group Health Association, Inc., was illegally engaged

in the practice of medicine. It is contended that the Anti-trust Act does not embrace a business illegal in its nature, and that the restraints forbidden relate only to lawful trade and commerce.

Further, it is contended that even if it be held that Group Health Association, Inc., was not an illegal enterprise, nevertheless defendants honestly believed it to be so, and therefore in defense may rightfully justify their acts by proving such beliefs and the facts supporting them, including advice of their counsel, an opinion of the Comptroller of the Treasury and a report of a congressional committee. It is argued that evidence of this kind is material and competent to refute a criminal intent, by showing that defendants' acts were taken only to protect themselves the profession and the public interests against supposed illegal activities of Group Health Association, Inc., and that if restraints did result they were under the circumstances reasonable.

The questions thus presented are important. The future course of the case awaits their determination. For obvious reasons my views must be but briefly stated.

1. As to illegality of Group Health Association, Inc., I do not think it was engaged in medical practice. It should be regarded merely as a convenient medium adopted by a group of persons for concerted action to secure for themselves and their dependents medical care upon a fixed prepayment plan. The association did not render medical service. It simply provided the personnel and facilities pursuant to the corporate plan adopted by the members. Licensed physicians so employed treated the patients without interference of the lay officers. Nor were the cooperative non-profit features of the plan calculated to commercialize or exploit the practice of medicine. In an actual, realistic sense, which I think is contemplated by the 'Healing Arts Practice Act', the doctors alone rendered the medical service. Only they were practicing medicine.

The situation was not altered by the contract whereby $40,000 were furnished by Home Owners Loan Corporation. If we assume the transaction to have been a wrongful diversion of public funds, that did not outlaw the business of Group Health Association, Inc., any more than would have been the case had a private trustee misapplied trust funds to the benefit of Group Health Association, Incorporated. However, culpable, it would not have the effect

of transforming the corporate business into a lawless venture.

2. I do not think evidence of defendants' belief as to illegality of Group Health Association, Incorporated, or the reasons upon which it rested, is material. At best it could bear only on motive—not intent. However impelling the reasons which may lead one to commit a criminal act, they cannot legally justify or excuse, though they may mitigate. Motive, that ultimate desire or purpose which leads to the formation of the intent to do a prohibited act, is often easily confused with the intent itself; but the two are distinct, and only the latter presents a relevant issue. Then too, mistake of law will not ordinarily excuse. I do not understand that counsel dispute this general rule. But they do argue that one element of the offense here charged is a specific intent to restrain trade, hence that defendants' belief becomes material as bearing upon the particular purpose alleged. I doubt that as defined by the statute the offense technically involves a specific intent; but if so, it is not of a nature to bring the case within the very limited field in which ignorance or mistake of law can legally bear upon the intent.

3. Further, I understand the argument to be that an honest and reasonable belief that Group Health Association, Inc., was operating illegally would, under the appellate court's decision, afford the defendants a proper ground to justify restraints 'as reasonable regulations of professional practice' to protect and support their standards, methods, and economic interests. But the thesis is too broad. The language of the court has reference to the right of medical societies to reasonably regulate and discipline their members, to the end of raising and maintaining high standards of medical practice. Control, of course, is over the members only, and that must be limited to reasonable restraints in their practice of the profession. Even within that field I fail to see how defendants' belief, or the grounds giving rise to it, can have any relevancy to a question concerning the reasonableness of such regulatory controls. Reasonableness of belief is not the issue.

4. Finally, it is urged that the belief of illegality would supply a reason to support defendants' right of persuasion and argument in protecting their standards of professional

practice and their economic interests. Of course legitimate argument and persuasion was and is available in seeking those objectives. But the contention is beside the point, for no restraint based upon argument and persuasion is alleged, nor could it constitute a legal charge.

The reasons stated lead me to the conclusion that the proof offered by defendants is not admissible upon any of the grounds urged. Therefore the Government's objection is sustained and the offer rejected.

"The offer of proof, as I have treated it, is the written paper filed March 14, 1941, as orally amended, revised and explained by counsel for the defendants. Many of the documentary items contained in the written offer are already in evidence. They can be dealt with later in keeping with this decision.

(Signed) James M. Proctor, Justice.

Dated March 17, 1941."

Exception noted.

DR. RICHARD H. PRICE, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I am a practicing physician in active duty in the Naval Reserve, stationed at Norfolk, Virginia. I took my preliminary education at the Auburn, New York, High School; at Geneseo, New York, Normal School I received the medical student's qualifying certificate from the University of the State of New York; I graduated from the College of Physicians and Surgeons in Boston; I received most of my medical education at the University of Buffalo, New York; I did graduate work at Buffalo and post-graduate work at the University of Chicago and University of Pennsylvania, and have had ten years of hospital work. Besides internship my hospital work was mostly general medicine, internal medicine, neurology, and psychiatry. I have done medical work for many Government hospitals, United States Public Health Service, the Veterans Administration, and in hospitals at Pittsburgh, Philadelphia, East Norfolk, Massachusetts, Perryville, and Augusta.

I joined the staff of Group Health without pay in December of 1937 and went on their salary roll in January, 1938, in charge of general medicine, having done prior thereto X-ray work without pay. In 1938 I worked full time at Group Health from 9 in the morning until 6 p. m., and then the rest of the 24 hours, making calls in Virginia, Maryland, and the District. At first there were five doctors on the staff of Group Health, and then later possibly seven or eight. I generally made examinations and prescribed treatment, but didn't do major surgery, obstetrical or pediatric work. I made applications to two local hospitals, one in the spring of 1938, to Homeopathic, and one in the fall, to Garfield Hospital, seeking courtesy privileges in medical cases. This was my letter over my signature. I didn't acquire privileges at Homeopathic. I was given courtesy privileges at Garfield Hospital which covered only medical cases. I have never been a member of the District Medical Society. I have been a member of the AMA and ceased my membership in January, 1941.

I could not fix the date when it was that I obtained privileges at Garfield, but it was not very long after I made application; I think it was within a month after I made application. I am quite sure it was in the fall of 1938. I do not know whether I got them before December 20, 1938.

Q. Did you have any patients at all in any of the hospitals in Washington prior to December 20, 1938?

A. I am not certain about that.

Q. You are not certain?

A. No.

Mr. Leahy: Have you got the date, so that we can be sure of it?

Mr. Lewin: I think it was December 19.

Mr. Leahy: The day before?

Mr. Lewin: Yes.

By Mr. Leahy:

Q. You got your privileges on December 19, 1938. How long before that time did you make application for the privileges?

A. I believe it was about a month before.

Q. What difficulty did you have in obtaining privileges from Garfield Hospital, Doctor?

A. I did not have any difficulty in obtaining privileges.

Q. After you wrote the letter, and following a period of approximately a month, then what occurred?

A. I received the privileges asked for.

While I was on the staff of Group Health and particularly during the year 1938 up to December 20, 1938 I found that the quality of medical care which Group Health was able to give to its patients was not the care that I wanted to give patients. In other words, I did not think that it was adequate medical care. I would say that it was an attempt to practice medicine wholesale; and I think that adequate medical care would be the opposite. In other words personal service is the keynote of adequate medical care. My ability to give personal service to the patients that I had in Group Health was very limited. This was due to many factors. My final opinion was that it was due to the type of setup, rather than to any other possible factor. There were other factors, of course. It was an organization trying to take the place of the family physician, of the personal physician. That was the fundamental trouble with it. If I were sick in the middle of the night and would want medical care—if I were a member of an organization such as that and called for medical care and a doctor would come to see me who was not familiar with my case, and I would be too sick to go into details, I would not have the confidence in him that I would have in a doctor who knew me. If I may take just a minute or so—I believe we are not as individuals just the sum of our hearts and lungs and arms and legs; we are more than that. In other words, personality is more than just the sum of the things that we can determine by X-ray examination. If you are sick it is more important to me as a physician what you think about yourself than the way your heart sounds. I found upon visiting patients that they had had other doctors than myself. I had to attempt to care for more patients than I could give proper care to. During 1938 there were nearly a hundred patients who had been promised operations and were not given them during that time. The chief reason they were not given them was because the organization did not feel they had the money to pay for the hospitalization. I asked about this of the Medical Director many times. I didn't have any patients with Group Health whom I considered were my own. Concerning the failure to give operations

to patients I was told by the Medical Director that it would be necessary to stall these operations off, which we did. The doctors I met, members of the Medical Society, were without exception very friendly to me, and kind in their attitude, and they didn't interfere with my practice with Group Health patients. I had occasion to seek advice and ask consultations with a member of the Medical Society, Dr. Thomas Lee. Dr. Lee visited the patients and sent me reports of what he found.

In 1938 I saw as many as 60 patients a day, and I, as a physician, couldn't render adequate medical service to as many as that. The other doctors on the staff were all overworked. I was called upon to see house calls in all types of cases except obstetric and pediatric ones. In making calls the patients didn't always receive the same doctor who had treated the patient formerly. The doctor making the call would not have the patient's record available and wouldn't know what the other doctor found or what the other doctor had prescribed; and the patient therefore would not have confidence in the new doctor. The doctor-patient relationship in Group Health was lost because we were attempting to practice wholesale.

Cross-examination.

By Mr. Lewin:

I had a serious heart case while at Group Health of a man over 40 years of age; in fact, I had two heart cases. In the man's case it was rather acute. When in private practice in Delaware I had available an electrocardiograph in the office of the duPont Company, and while at Group Health I had one. There is a great deal of discussion as to how much an electrocardiograph will indicate; it will not make a diagnosis, that takes a doctor. I felt the need in the heart cases of consulting a specialist, and called a member of the District Medical Society, Dr. Thomas Lee.

Q. Were you able to get a consultation with him?
A. May I express it in a few words?
Q. Won't you answer the question?
A. I cannot say no, and I cannot say yes.
Q. Were you able to get a consultation with him?
A. I called Dr. Lee on the telephone and asked him about the same case and he said, "Doctor, I would like to see the

case with you, but there is some question, which I hope will be settled soon, about the legality of Group Health. Until that is settled I would rather see the patient myself and send you a report."

Q. Is that all he told you?

A. At that time.

Q. Did you ask him to come in consultation with you?

A. I asked him to see the patient. I am not sure whether I asked him to see the patient with me or not. But whether I asked the question directly, as to whether or not he would see the patient with me, his answer was as I have told you. I had not even met Dr. Lee.

Q. Did you ask him to come in consultation with you over that case?

A. I can't answer that yes or no.

Q. Did you testify before the grand jury of the United States that returned this indictment?

A. I did.

Q. Were you asked to tell about this case that I am asking you about now?

A. That is right.

Defendants objected to the use of the grand jury transcript on the ground that it should be shown to the witness and the witness asked if that refreshed his memory. Objection overruled and exception noted.

Q. As a matter of fact, you testified before the grand jury on October 31, 1938, did you not, toward the end of your association with Group Health Association? Is that right?

A. So far as I remember. I see that it is that date.

Q. And that is after you had been with Group Health Association something over ten months; is that right?

A. That is correct; yes.

Q. I point to this answer which you gave there and ask you if that refreshes your recollection as to whether or not you called Dr. Lee in consultation with you?

A. I should say that I did.

Q. You told us that Dr. Lee expressed some doubt as to the legality of Group Health Association. Was that your testimony?

A. That is what he said on the telephone. It was not that he expressed the doubt. He said there was a question, but I don't think he had any doubt about it.

Q. Did he not say that he would be glad to come in consultation with you, but he could not do it because you were a Group Health doctor and it was a Group Health patient?

A. That is correct.

Q. Did he not give the reason for that the instructions of the local District Medical Society?

A. He said they questioned the legality of it.

Q. Did he not say that he had been instructed by the local Association not to hold consultations with any doctors on the staff of Group Health?

A. That is right.

Q. Is that what he said?

A. That is correct.

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Q. As a matter of fact, he did not consult with you, did he?

A. Not with me; no.

Q. He saw the patient independently, did he not?

A. Yes.

Q. And that was abnormal procedure, was it not, when you had asked a doctor to come in consultation with you?

A. Well, it is not exactly the usual view of consultation.

Q. What is the usual view?

A. I suppose the very meaning of the word would be coming together.

Q. Is there any advantage in that?

A. There is in many cases.

Q. But you were deprived of that advantage in this case, were you not?

A. That is correct, to that extent.

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Q. Did you not have another patient also seriously ill with heart trouble?

A. That is right.

Q. An old lady over 60 years of age?

A. Yes.

Q. And was she not so sick that you thought she was going to die in your office?

A. In the office of Group Health Association.

Q. And did you not try again to get Dr. Lee in consultation?

A. I did; I called him again.

Q. Did you not get the same response from him, that the District Medical Society would not let him come?

A. The response was the same as the other time.

Q. Have I correctly characterized what the response was, that the District of Columbia Medical Society had a rule which forbade him to have any consultation with Group Health doctors?

A. He did say that the District Society questioned the legality of Group Health; I am pretty sure, both times. He said he did not have anything against me personally; there was not anything personal at all. He simply said that he hoped the thing would be settled soon.

Q. Did he not say in that case that the Medical Society still prevented him from having a consultation with you?

Mr. Leahy: I object to this constant repeating, if your Honor please, and doing by indirection what your Honor has told him not to do directly.

The Court: While I do not think Mr. Lewin so intended, it might be open to that objection.

Mr. Lewin: It is simply a question of holding it in my mind. I want to be accurate about it. I might have transcribed this into notes, and there could not be any question about my using them.

The Court: It is a little difficult to decide. Proceed.

By Mr. Lewin:

Q. Will you answer that question?

A. Of course—would you mind repeating the question?

Q. Did he not tell you in connection with this old lady's case that the Medical Society still prevented him from having consultation with you?

A. Yes.

Q. Did he not say that he hoped matters would be straightened out so that you could have consultations in the usual way?

A. Yes, sir.

Mr. Richardson: I would like to suggest that this alleged grand jury transcript be taken away from in front of counsel. He is simply reading from it and avoiding your Honor's ruling with reference to it.

Mr. Lewin: I do not think I am.

Mr. Richardson: Why not put it out of the way?

Mr. Lewin: Why do you have any doubt about the authenticity of it? Why can I not read it?

The Court: It is pretty difficult for the court to control that. Suppose it were some other paper that he was refreshing his recollection from: you could not object to it. Suppose he had copied it off from these pages to another piece of paper. The difficulty has arisen from identifying that as the report of the grand jury proceedings. That is where the mistake arose, not by the use of the paper itself.

Mr. Richardson: Of course his producing it is not our fault; but having produced it and identified it, standing there and turning the pages and reading it leaves the impression that the grand jury testimony is being read to the witness.

The Court: The mistake has been made in identifying those notes as particular notes. It is just one of those things that will happen. I cannot wipe that out.

By Mr. Lewin:

Q. Is it not true that while you were with Group Health you had a number of other cases where you would have had the usual consultations but could not get them—let me change that—and could not have them because of this rule?

Mr. Leahy: What rule?

Mr. Lewin: The rule of the District Medical Society—just what Dr. Lee gave as his reason.

A. I do not recall any. There may have been.

By Mr. Lewin:

Q. Do you not recall other cases in which you would like to have had face to face consultations with specialists in the District of Columbia, members of the District Medical Society, if you could have obtained them?

A. I think there probably were.

Q. Were you not blocked from obtaining them or trying to obtain them because of this experience which you had with Dr. Lee in those two cases?

A. I think I can say yes to that, in the same way.

I was with Group Health as late as December 20, 1938. At that time I was a member of the AMA through the Newcastle County, Delaware, Medical Society.

Q. Had you not received some instructions from the American Medical Association at that time that you would

have to change your membership to some other local society?

A. I do not recall that now; no, sir.

Q. Would you like to have your memory refreshed?

A. I don't recall anything about it right now.

Q. Let me show you this and see if it refreshes your recollection (handing transcript to the witness). Had you not had instructions from the AMA that you must apply to the District Medical Society for membership if you wanted to retain your membership in the AMA?

Defendants objected on the ground that it was immaterial and outside the scope of the direct examination. Objection overruled and exception allowed.

The Witness: I had a letter something about applying locally, but I do not think it said the District Medical Society.

By Mr. Lewin:

Q. What did it mean by applying locally?

A. If I recall now, it was a ruling of the American Medical Association that a doctor away from his former place of practice more than a year should apply in his new locality for membership rather than to maintain his membership in the old location.

Q. And your new locality was the District of Columbia, was it not?

A. Not my residence; Group Health was, yes.

. . . . . .

Q. As a matter of fact, throughout the whole period of 1938, from the time you joined Group Health Association until October 31, 1938, were you not able to give better treatment to your patients, and superior treatment to your patients, while you were with Group Health, than you were able to do in your private practice in Delaware?

A. No.

Q. Let me see if I can refresh your recollection.

May I do that, your Honor?

The Court: I think you may, for that.

(Mr. Lewin handed transcript to the witness.)

A. In some ways, yes, but not in every way.

By Mr. Lewin:

Q. Did you not believe in October, 1938 that we, meaning Group Health Association, could give better medical care than could be given in private practice?

A. No; I don't believe that we could.

Mr. Lewin: Now, your Honor, may I confront him more directly? I would like to show this to your Honor (handing transcript to the court).

The Court: You may let him see it.

By Mr. Lewin:

Q. You have seen this portion of your grand jury testimony, have you not (indicating)?

A. Yes, sir.

Q. What is your testimony since you have seen this answer to my last question?

A. I still think that at the present time we could not give them as good attention.

Q. What did you think while you were with them in October, 1938, and throughout that whole period, from January, 1938, to October, 1938? What was your opinion then?

A. I did mention something about the patient's pocketbook, and so forth, that we did not have to worry about the patient's pocketbook. But, on the other hand, I feel certain now——

Q. Now, wait a minute. I am asking you what you thought then. That is not responsive.

Mr. Leahy: I object, if your Honor please. The proper thing to do is to say, "Were you not asked this question and did you not give this answer?"

* * * * * * *

Q. In October, 1938, were you not asked this question and did you not give this answer:

"What about the kind of treatment that you can give patients at Group Health as compared with the kind of treatment you could give patients in your private practice in Delaware?"

And did you not give this answer:—

Mr. Leahy: I object to the use of this transcript, which your Honor has again and again called to counsel's atten-

tion. It does not do any good for your Honor to give a direction; he just simply walks over it.

Mr. Kelleher: That is not a fair statement.

The Court: I will permit him to ask the question. I have seen the answer. Exception noted.

Q. Did you not give this answer to that question?

"Well, the treatment and care are superior here, because we have the association with other men in the various specialties and have complete and adequate laboratory facilities, and also because we can devote our entire time to medical work and not have to think about the patient's pocketbook and so on. So I believe we can give the patients better medical care."

What is your answer?

A. That I did say that; yes.

Mr. Richardson: May we now inspect the transcript that counsel just read?

The Court: Yes.

Mr. Kelleher: May we approach the bench?

The Court: Not on that. Counsel has the right to see it.

Mr. Kelleher: All we mean is to be sure that the limitation is correctly expressed. They can see the part that is addressed to the witness.

The Court: Yes.

Thereupon, the portion of the grand jury transcript from which the witness was questioned was handed to defense counsel.

Redirect examination:

I described the condition of the patient to Dr. Lee over the phone and told him I would like to have him see the patient, and he said he would be glad to see the patient and send me a report. Dr. Lee said there was a question of the legality of Group Health, the association with which I was connected. Dr. Lee did so, sending me as soon as possible a full report, and the patient got better. With reference to the lady, Dr. Lee repeated again in substance what he had previously told me concerning my gentleman patient, and consulted with me over the phone, and that such discussion, over the phone, while not face to face, is a consultation.

I discussed with Dr. Lee over the telephone the condition of each of these patients; he went into full details about their conditions and his findings. He visited the lady patient as soon as possible, and she got better.

Q. Now, referring to these questions asked with reference to the character and type of care, do you recall whether at any time shortly after October, 1938, along about December, 1938, or January, early January, 1939, there came a time when you resigned from G. H. A.?

The Government objected on the ground it was beyond the scope of the indictment and improper redirect examination. Defendants stated there is an attempt made at impeachment and it can be shown that at or about the same time the same sentiments were expressed concerning Group Health.

Objection was sustained and exception allowed. The defendant then offered to prove through the witness that he had publicly announced his aforesaid reasons for resigning from Group Health; that Group Health later rehired him and gave him assurance the conditions of which he complained, and under which the witness believed he could not give adequate and complete medical care, would be corrected by the employment of more doctors; that on returning to the employ of Group Health these conditions were not cured by Group Health and he resigned again for the same reasons. This offer was refused by the Court and the exception of the defendants was noted.

I recall no other case of consultations with doctors over the telephone and such cases must be hypothetical rather than actual.

PERCY S. BROWN, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I am treasurer and trustee of the Twentieth Century Fund, and secretary treasurer and executive director of the Good Will Fund. I know very little about Health Economics Association, Incorporated, which was supported by

the Twentieth Century Fund, of which Mr. Rickcord was director. I am joint secretary and treasurer of the joint committee of the two funds—Twentieth Century and Good Will Fund, Inc. I identify Def. Ex. 31 as the auditor's report entitled "Twentieth Century Fund, Inc.—Report on Examination of Account, March 1, 1936, to February 28, 1937"; Def. Ex. 32 as the auditor's report entitled "Twentieth Century Fund, Inc.—Report on Examination of Account, March 1, 1937, to February 28"; Def. Ex. 33 as the auditor's report entitled "Good Will Fund, Inc.—Report on Examination of Account, December 29, 1936, to December 31, 1938"; Def. Ex. 34 as the auditor's report entitled "Good Will Fund, Inc.—Report on Examination of Account, January 1, 1939, to December 31, 1939"; Def. Ex. 35 as the auditor's report entitled "Good Will Fund, Inc.—Report on Examination of Account, January 1, 1940, to December 31, 1940"; Def. Ex. 35-A as the auditor's report entitled "Twentieth Century Fund, Inc.—Report on Examination of Account, March 1, 1938, to February 28, 1939"; Def. Ex. 36 as the report of the joint committee of the two funds entitled "Joint Committee, Twentieth Century Fund and Good Will Fund—Financial Report—November 9, 1938, through December 31, 1939"; Def. Ex. 37 as the report of the joint committee entitled "Joint Committee, Twentieth Century Fund and Good Will Fund—Financial Report—Twelve Months Ended December 31, 1940"; Def. Ex. 38 as the pamphlet issued by the Twentieth Century Fund entitled "The Twentieth Century Fund, Annual Report—1938 (March 1, 1938 to February 28, 1939)"; Def. Ex. 39 as the pamphlet issued by the Twentieth Century Fund entitled "The Twentieth Century Fund, Annual Report—1937"; Def. Ex. 40 as the pamphlet issued by the Twentieth Century Fund entitled "Twentieth Century Fund, Annual Report—1936"; and Def. Ex. 41 as the pamphlet issued by the Twentieth Century Fund entitled "The Twentieth Century Fund, Annual Report—1935". The audits were made by the auditor, Herbert P. French. The financial statements of the joint committee are the statements of the committee. The annual reports are the regular published annual reports of the Twentieth Century Fund. All of the papers are produced from the files and records of the Twentieth Century Fund and Good Will Fund, Inc., and the joint committee

of these funds. The reports of the joint committee were prepared in my own office by my own secretary, who was also the bookkeeper and who prepared them under my supervision and direction, and they are part of the joint committee records. As treasurer of the Twentieth Century Fund I am required to have an audit made every year, and copies of these audits are mailed to each of the trustees and filed. These audits were taken up at the annual meetings of the board of trustees of each organization and have them approved, and have become part of the records of each organization. I have a recollection of these records in so far as they pertain to Group Health Association and the entries made in these exhibits actually represent what they purport to represent, and are original records. I will initial the items which refer to Group Health. (Witness initials exhibits.) Health Economics Association, Inc., was set up by Twentieth Century Fund.

Q. And, Mr. Brown, of your own personal knowledge do you know whether it was the Health Economics, Inc., which was instrumental in having HOLC set up GHA?

This question was objected to by the Government as immaterial. Whereupon the defendants offered to prove by the witness and through the various reports and audits identified by him that Health Economics Association, Inc., was instrumental in setting up Group Health and furnishing it with financial support, for the purpose of showing that Group Health Association was subsidized, and to meet the testimony of the witnesses Penniman and Zimmerman. The evidence offered was, upon objection by the Government, refused and an exception noted.

Mr. Leahy: Just one more question, Mr. Brown: Showing you Defendants' Exhibit 33 for identification, I am drawing your attention to an item which is numbered 2, under "appropriations and Grants" and "Good Will Fund, Inc." Does this have anything to do whatsoever with GHA?

A. Yes, it does.

Q. Would you so indicate by your initials? (The witness complied.)

DR. ROSCOE GENUNG LELAND, a defendant, and witness for the defendants.

Direct examination.

By Mr. Leahy:

I am a doctor. I reside in Chicago. I am director of the Bureau of Medical Economics of the American Medical Association and have been for the past ten years. I graduated from the Mendon, Michigan, High School, graduating from the University of Michigan, Department of Literature, Science, and the Arts, with a degree of Bachelor of Arts, in 1907; in 1909 I graduated from the Michigan University with the degree of Doctor of Medicine, took an assistant internship at the University of Michigan, and from 1910 to 1919 engaged in private practice of medicine for nine years in southwestern Michigan. During this period I entered the service of the Army of the United States, and served in the United States, France, and England, for 26 months, until May of 1919. Then I went on the staff of the Ohio State Department of Health as administrative head of the Division of Health, which division comprised the Bureaus of Tuberculosis, Hospitals, Public Health Nursing, Venereal Diseases, Social Protective Measures, and Care of Ophthalmia or Prevention of Ophthalmia in the newborn, for six years. I then went to Toledo, Ohio, as executive secretary of the Toledo Public Health Association, consisting of 26 private organizations, where I remained for 15 months. In 1927 I went to Chicago to become assistant in the Bureau of Health and Public Instruction of the AMA, with which Bureau, which is still in existence, I remained four years; the function of that Bureau is to provide information on health matters and the preservation of health and the prevention of disease for the public, circulating that information through the health magazine published by the AMA known as Hygeia. The Bureau also publishes a large number of publications on health subjects and has in charge a radio program, which latter has been devised to carry information concerning the medical profession and health to the public, particularly to children in grade and high schools. The Bureau publishes about 50 or 75 magazines, in addition to providing radio program items, which number several hundred. This literature is distributed free of charge on request.

Later I became director of the Bureau of Medical Economics of the AMA, formed in 1931, in which work I have three associates and 25 clerks. The Bureau undertakes to discover and collect information on sickness and the way in which people get their hospital and medical care, and meet their bills. It keeps vital statistics pertaining to births and deaths and the types and amount of diseases. A large amount of this information is collected from official organizations such as the U. S. Census Bureau, International Labor Organization in Geneva, Switzerland, and a large number of organizations that are engaged in the collection of information pertaining to vital statistics, and also from medical organizations that have conducted studies in various parts of the country. Some articles of the Bureau are published in the Journal. In publishing articles the Bureau of Medical Economics tries definitely to present both sides. On some subjects there is probably only one side. In publishing scientific articles we endeavor to bring to the examination of the subject under consideration the highest degree of scientific treatment in order to arrive at a most sound judgment.

I first heard of Group Health at the AMA meeting at Atlantic City in June 1937. I don't recall seeing a copy of the letter of Major General Ireland (Gov. Ex. 295-A) that was said to have been sent to my Bureau, and which was read here at this trial. Dr. Woodward at the convention made a brief report or statement on Group Health to the House of Delegates. I don't recall any action taken concerning Group Health at the June meeting. The next time I heard of Group Health was when I was asked to accompany Dr. Woodward to Washington in July, 1937 to confer with members of the District Medical Society. The only instructions I had when I came to Washington then were to secure as much information as possible about the nature and operation of Group Health. I had made no effort prior to that time to find out anything about Group Health, and knew nothing about the existence of such an organization. I came to Washington in July, 1937, and attended a meeting of the Medical Society. The only physicians I remember there were Dr. Conklin, Dr. Macatee, Dr. Hooe, and Dr. McGovern. I had met Dr. McGovern and Dr. Macatee but not Dr. Hooe prior to the meeting. I had met Dr. Christie in connection with some work on the cost of medical care; I have never met Dr. Custis, Dr.

Martel; Dr. Neill, Dr. Reede, Dr. Sprigg, Dr. Stanton, Dr. Warfield, Dr. Wilson, Dr. Young prior to the trial. I met Dr. Groover in 1937, Dr. Mattingly in 1937 and Dr. Yater in 1935. At meetings of the District Society I obtained no further information than what I had already had concerning Group Health, which pertained to the articles of incorporation and some information about financing. The only other detail of the meeting I remember is that Dr. Woodward suggested that the District Society ought to have counsel. I made a suggestion for the Medical Society itself pertaining to a method by which prepayment medical care could be organized. I never attended any other meetings of the District Medical Society concerning Group Health. I have attended other meetings of the District Medical Society. On returning to Chicago I made a verbal report of the visit to Washington to Dr. West, and did nothing further. From the time of my talk with Dr. West I have done nothing in any way, shape or form with reference to Group Health. In November, 1938, I discussed with a committee of the District Medical Society a plan to provide people of the low-income group with medical services on a prepayment basis. The Society was formulating a plan as the outgrowth of a plan they developed in 1935. I never discussed with the officers or members of the District Society any matters, ways or means of anyone hindering or restraining Group Health and had no correspondence on the subject. I paid no attention to Group Health after the meeting in July, though I may have asked an occasional question or two of Dr. Woodward concerning it.

I attended a meeting on November 6, 1937 with Drs. McGovern, Hooe, West, and Woodward, but took no part in that meeting and did not say a word. In 1937 and 1938 I had two assistants in the Bureau, trained to take care of certain studies and certain correspondence. The correspondence of the Bureau varies from 3,000 to 8,000 letters a year. A great deal of this correspondence is inquiries necessitating considerable research in order to return intelligent and satisfactory replies. The Bureau has no jurisdiction to fix any policy concerning group payment or prepayment plans of medicine as policies are established by the House of Delegates of the AMA. In 1934 the House of Delegates adopted ten principles intended to assist state and county medical societies in the organization of plans of

prepayment care. Later the House of Delegates also adopted ten principles which apply to the organization and administration of group hospitals. The only opposition that the Bureau has had, which was established by the House of Delegates, is opposition to compulsory sickness insurance. No other policy whatsoever has characterized the work of the Bureau.

Mr. Laux and Mr. Simons, who worked in my Bureau, have carried on a considerable amount of correspondence I have never seen. I had no knowledge, until I heard it read at the trial, of the contents of the correspondence dictated by Mr. Laux and Mr. Simons. I read only bits of correspondence coming into the Bureau which I felt I should answer myself and sometimes correspondence which I pass on to associates to handle. Gov. Ex. 265 looks familiar as it bears the stamp of the Bureau. I have no recollection that I ever read it myself. I wrote Gov. Ex. 264. It is an answer to Gov. Ex. 265. Dr. Arthur J. Cramp was the director of the Bureau of Investigation of the American Medical Association, an independent bureau that collects information concerning the operations of quacks, charlatans, patent medicines and a lot of curious devices for the treatment of people. The information collected is published in the Journal of the AMA.

Defense counsel read Gov. Ex. 265 to the jury as follows:

"March 16, 1934.

DEAR DR. CRAMP:

I am enclosing a copy of a circular which we have just received through our Los Angeles representative. This is designed to interest our Los Angeles agencies as a group to avail themselves of whatever service this medical clinic has to offer at the fee schedule, as I understand, which is quoted herein.

Before instructing our general agent in Los Angeles as to what they shall do relative to this matter, I should like your opinion concerning the ethics of this group, and whether the principle on which such a medical group is operated is consistent with the highest medical ethics.

Doubtless, there is available to you full information concerning the staff of physicians who make up this particular medical group. In so far as you know, are they all men of ability and integrity?

I should greatly appreciate your opinion concerning this matter and any recommendation which you n ay have regarding this type of medical practice.

Very truly yours, Ernest J. Dewees, Assistant Medical Director, Providence Mntual Life Insurance Company."

Defense counsel read Gov. Ex. 264 to the jury as follows:

"March 23, 1934.

DEAR DR. DEWEES:

The Los Angeles Medical Association, I believe, will be glad to give you a more recent report on the personnel and activities of the Ross-Loos medical group than can be given from this bureau.

I am personally of the opinion that the methods used by many of the organizations similar to this one do not contribute to the best interests of either the public or medical profession.

The Secretary of the Los Angeles Medical Association is Dr. Harry H. Wilson, whose office is at 1925 Wiltshire Boulevard, Los Angeles, California.

It may be of some interest to you to note a newspaper report under date of March 6, 1934, states that Dr. H. C. Loos and Donald Ross 'were banished from the Los Angeles County Medical Association Monday night for engaging in a plan of health insurance.'

For that and other reasons, I believe it might be more satisfactory for you to secure the information you desire from the Los Angeles Medical Association.

Sincerely yours, R. G. Leland."

In writing this letter we had information concerning the organization and operation of the Ross-Loos medical group, but this information concerning the newspaper item was entirely news. We had nothing on which to verify that statement, therefore, it seemed to me that checking with the local people was the wise procedure. The AMA has never taken any action against the Ross-Loos Clinic. The AMA had no jurisdiction over the activities of the Los Angeles Medical Association. The question of the Ross-Loos Clinic came to the Judicial Council of the AMA late in 1935 or in 1936 as an appeal from an action of the California

Medical Association. The appeal was by Doctors Ross and Loos. The AMA reversed the action of the California Medical Society and I believe that Doctors Ross and Loos are members of the AMA at this time.

In stating to Dr. Dewees that: "I am personally of the opinion that the methods used by many of the organizations similar to this one do not contribute to the best interests of either the public or the medical profession," I referred to information that had come to the Bureau of Medical Economics concerning a considerable number of organizations that had become legally involved in California. I believe there were some 143 of such organizations in California, and many of them had become organized in late 1933, or early 1934—a few some years before that—and about 1933 some of those organizers were indicted and sent to prison. There was a list of 143 of them that were being investigated and, as I recall it, at least six or seven individuals were finally indicted and sentenced.

There are some 2,000 or more medical industrial care plans. There are 300 student health services in colleges and universities; about 300 organizations of the type known as mutual health and hospital organizations, called consumer groups. About 500, including the 143 from California, of these plans are operating. There are 19 flat-rate plans used by hospitals; 54 hospital insurance companies; 78 group hospital plans operating, and 60 more proposed; 350 group medical plans, 24 union sick benefit plans, and 350 rural medical plans sponsored by the Farm Security Administration. The only action taken by the AMA concerning these plans is to secure information about them and, in some instances, to publish the facts concerning them. As director of our Bureau I have taken no action against any one of these plans. The methods used by many of these organizations, as I mentioned in my letter to the Providence Mutual Life Insurance Company as not tending to contribute to the public interest, were those used by institutions in California which took money away from people and were not in existence and did not give the service when the people needed the service.

I wrote Gov. Ex. 268 in reply to Gov. Ex. 269.

Defense counsel read Gov. Ex. 269 to the jury as follows:

"May 25, 1934.

GENTLEMEN:

We have out here in Los Angeles a medical group called the Ross-Loos medical group. Could you advise me if this organization meets with the unqualified endorsement of the AMA? I have been of the opinion that it was not exactly ethical and for that reason didn't care to endorse it.

Thanking you for this information,

Yours truly, George Horton."

Defense counsel read Gov. Ex. 268, just identified by Dr. Leland as his reply, dated May 31, 1934, to the inquiry (Gov. Ex. 269) to the jury as follows:

"The Los Angeles Medical Association, I believe, will be able to give you a more recent report on the personnel and activities of the Ross-Loos medical group than can be given from this bureau.

The Secretary of the Los Angeles Medical Association is Dr. Harry H. Wilson, whose address is 1925 Wiltshire Boulevard, Los Angeles, California.

I am personally of the opinion that the methods used by many of these organizations similar to this one do not contribute to the best interests of either the public or the medical profession.

It may be of some interest to you to know that a newspaper report under date of March 6, 1934, states that Doctors H. C. Loos and Donald Ross 'were banished from the Los Angeles County Medical Association Monday night for engaging in a plan of health insurance.'

For that and other reasons I believe it might be more satisfactory for you to secure the information you desire from the Los Angeles Medical Association."

In expressing my opinion concerning many of these organizations, I also had in mind in addition to the situation heretofore stated that many of them used advertising and solicitation, which are not considered ethical practices, as they afford opportunity to make exaggerated and unwarranted claims for the advertised benefits, and the same holds true as to solicitation, which involves a certain amount of mouth advertising.

I have no personal recollection at the present time of Gov. Ex. 271, but Gov. Ex. 270 is a letter which I wrote in reply to Gov. Ex. 271.

Defense counsel read to the jury as follows:

Gov. Ex. 271 is a letter of inquiry from R. H. Ludden, M. D., physician and surgeon, Viroqua, Wisconsin, directed to the American Medical Association, attention of R. G. Leland.

June 2, 1934.

"GENTLEMEN:

Could you please send me information on the Ross-Loos medical group, Los Angeles, California?

Yours very truly, R. H. Ludden, M. D."

Gov. Ex. 270 is a carbon of a reply which Dr. Leland states he has written to Gov. Ex. 271. It is dated June 5, 1934, directed to Dr. Ludden. It was read from, as follows:

"The Los Angeles Medical Association, I believe, will be able to give you a more recent report on the personnel and activities of the Ross-Loos medical group than can be given from this Bureau."

Q. Now, Doctor, have you seen the Ross-Loos Clinic since 1932, when you stated you visited it?

A. I have not.

Mr. Leahy:

"I am personally of the opinion that the methods used by many of the organizations similar to this one do not contribute to the best interests of either the public or medical profession."

Then he gives the name of the Secretary of the Los Angeles Medical Society; then the same paragraph as to the newspaper account of March 6, 1934, and concludes:

"For this and other reasons, I believe it might be more satisfactory for you to secure the information you desire from the Los Angeles Medical Association."

In 1934 I learned from a newspaper account that Doctors Ross and Loos had become involved somewhat with the Los Angeles Medical Association and that was why I referred some inquiries to Los Angeles Medical Association.

I don't recall Gov. Ex. 273 at this time, but I wrote Gov. Ex. 272 in reply:

Defense counsel then read to the jury as follows:

This in an inquiry from Drs. Rigby and Hargrave, at Shreveport, Louisiana; it is Gov. Ex. 273, dated January 22, 1935. It is addressed to the American Medical Association.

"GENTLEMEN:

Due to the fact that I am chairman, of the Economics Committee, of the Shreveport Medical Society, I desire to get all the information that is obtainable on Medical Economics. We have, in this vicinity, some members of the medical fraternity, who do not belong to our local or state society and who engage in extensive advertising to further their practice of medicine. We have one, who claims to be a Fellow of Procology, and there are others whom I could name operating in various branches of medicine. I also have in my possession, some information from the Ross-Loos Medical Group, Los Angeles, California. I would like to know if the Ross-Loos Medical Group of Los Angeles, are an ethical group of Doctors and if they belong to organized medicine.

Any information you may be able to give me will be appreciated."

To this Dr. Leland wrote the original of which Gov. Ex. 272 is a copy, dated March 4, 1935.

Gov. Ex. 272 read by defense counsel to the jury as follows: (Excerpt.)

"The Los Angeles Medical Association, I believe, will be able to give you a more recent report on the personnel and activities of the Ross-Loos Medical Group than can be given from this bureau.

The Secretary of the Los Angeles Medical Association is Dr. Harry H. Wilson,"

giving his address.

"I am personally of the opinion that the methods used by many of the organizations,"

and the same paragraph again.

"It may be of some interest,"

and the same paragraph.

"For this and other reasons, I believe it might be more satisfactory for you to secure the information you desire from the Los Angeles Medical Association.

Under separate cover I am sending you a complete set of the publications of this bureau which I trust will be of interest and benefit to you."

During the time between my letters of June, 1934 and this letter in March, 1935 I had received no additional information on the Ross-Loos Clinic. These various inquiries did not induce me to make any investigation of the Ross-Loos Clinic for or on behalf of the AMA. In 1932 I made an investigation of the Ross-Loos Clinic on my own initiative. I called at the Ross-Loos Medical Clinic where I was received very cordially. I met Doctors Ross and Loos and a considerable number of the staff. I was shown the clinic building and the facilities used for diagnosis and treatment of patients, to acquaint me with the methods and personnel of the Ross-Loos medical group. This was a routine visit made shortly after the organization of the Bureau of Medical Economics for the purpose of collecting information. I visited many other groups that year. We collected additional information and published it. The AMA never took any other action on this information.

I wrote Gov. Ex. 274. It was in reply to an inquiry from Mr. Baker, Executive Secretary of the Hennepen County Medical Association, Minneapolis, Minnesota and my letter is dated April 30, 1935.

Defense counsel read Gov. Ex. 274 to the jury as follows:

"DEAR MR. BAKER:

The Kansas City Industrial Hospital Association agreement with the Butler Manufacturing Company is but another example of similar types of contract practice that exist in other parts of the United States. Patients are not given freedom of choice of physician but must accept the physician furnished by the Industrial Hospital Association. The agreement states that members may at their own expense call or employ their own physician. Nothing is said as to the manner in which hospital care will be provided, although it is inferred that beneficiaries must be taken care of in hospitals of the Association in the event hospital care is necessary.

This type of organization has been brought to the attention of the medical profession on several occasions. It is one which, in my opinion, ought to be discouraged.

Under separate cover I am sending you several copies of our reprint 'New Forms of Medical Practice,' in which several types of this form of arrangement are discussed.

Sincerely yours,"

When I said that it was similar to other forms of contract practice that existed in other parts of the United States I meant forms of contract practice that existed in various parts of the United States for many years; but there seems to have been a concentration of contract practice of a low type in certain sections, some in West Virginia; some in the State of Washington, and some in Oregon; and on the basis of the performances of these types of contract practice I believe that those particular types ought to be discouraged. Those types of contract practice, group and individual, were organized to provide a certain amount of service under contract at a very low cost. It was the custom for others, individuals or groups, to organize similar services with contracts to provide medical care or hospital care, or both, offering either the same amount of service for less money, or more services for the same amount of money. In some cases this competition, if it can be called that, or solicitation, went from bad to worse by constantly lowering the quality of medical care offered. I could give you some examples; some of the bad features. I refer to such an example as the amputation of a man's arm, instead of carrying the man through to the reasonable restoration of that arm to function, because it would require less time than the process of treatment and rehabilitation. There were a large number of these low grade organizations all over the country.

Gov. Ex. 277 refers to a situation in Cincinnati, Ohio. A representative of the Academy of Medicine of Cincinnati had made some investigation of prepayment plans and has proposed a special form of prepayment arrangement to be organized and operated in Cincinnati.

Defense counsel read Gov. Ex. 277 to the jury as follows:

On the stationery of the Academy of Medicine of Cincinnati, Cincinnati, dated March 2, 1936, to Dr. Leland:

"The Academy of Medicine of Cincinnati is confronted with the following problem:

Dr. George H. Cook, after some service with the Ross-Loos at Los Angeles, is preparing to start such a clinic in Cincinnati. Some of the members of the Academy of Medicine whom he has approached have asked the Academy whether an association with this clinic will jeopardize their standing with the Academy. The Executive Council of the Academy has ruled that this question must be answered by the entire County Society. This will be brought to a vote on Tuesday, March 10th. Have you any information about this clinic or have you any experience which will guide us in handling this matter?

The Executive Council will meet on Friday afternoon, March 6th, and I would appreciate hearing from you by that time if possible.

Thanking you in advance for any information you can give us, and with very best wishes, I am

Sincerely yours, Edward D. King, President."

Gov. Ex. 276 is the letter which I wrote in reply.

Defense counsel read Gov. Ex. 276 to the jury as follows:

That's numbered Gov. Ex. 276 and runs to Dr. King, President of the Academy of Medicine of Cincinnati, dated March 4, 1936.

"This is to acknowledge receipt of your letter of March 2nd, relative to the formation of a clinic similar to the Ross-Loos Medical Group in Los Angeles.

The effect of association with such a group by members of the Academy of Medicine of Cincinnati must be determined by the Academy, which has the original jurisdiction over the ethical conduct of its members."

Q. Doctor, why did you write that to Dr. King?

A. Well, because it's true.

Q. Did you have anything to do with the ethical conduct of members of the Academy in Cincinnati?

A. Only in so far as I might discuss the matter with the Secretary or some member of the Academy. I had no authority nor jurisdiction over the members of the Academy of Medicine of Cincinnati.

Q. For instance, if the Academy of Medicine of Cincinnati wanted to start a clinic, what jurisdiction did your bureau have over it?

A. Not a particle.

Q. What jurisdiction did the American Medical Association have over it?

A. Nothing, nothing.

Q. In other words, was the Academy entirely independent of you and the American Medical Association, anything it wanted to do?

A. Yes, sir.

Q. (Continuing reading from Gov. Ex. 276): "I believe that you should bear in mind that the press, which has socialistic leanings, has energetically taken up the cudgel for the Ross-Loos Medical Group."

Now, what did you mean by that statement, Doctor, when you said: that the press which had "socialistic leanings"?

A. Well, I think many of us have seen certain publications that have a very liberal view and that have from time to time published articles and have assumed the attitude that the socialization of medicine would be a good thing for the people and for the profession of the United States.

Mr. Leahy (Reading): "An attempt is being made to show that the Ross-Loos method is the most desirable method of providing medical care.

I believe that in the discussion of this matter, your Executive Council and the membership of the Academy as well, should bear in mind the Ten Principles adopted by the House of Delegates at the Cleveland Session in 1934, as a measure of the necessity for, and the method of providing medical services. For example, the 3rd Principle states, 'Patients must have absolute freedom to choose a legally qualified doctor of medicine, who will serve them from among all those qualified to practice and who are willing to give service.' Since I do not have before me the details of the proposal by Dr. George H. Cook, I do not know whether his plan contemplates such a freedom of choice of physician.

Again, the 8th Principle states, 'Any form of medical service should include within its scope all legally qualified doctors of medicine of the locality covered by its operation, who wish to give service under the conditions established.'

Under separate cover, I am sending you a copy of the Special Report of this Bureau entitled, 'Medical Service Plans,' adopted by the House of Delegates at the Atlantic City Session. However, I am calling your special attention to these two principles.

There are other factors which must be considered in examining any proposal to supplement the regular practice of medicine. In many instances these factors may not be apparent in the proposals themselves, but develop later in the operation of the scheme. I refer particularly to the quality of medical care and other methods by which subscribers or participants are obtained. In many schemes which have come to my attention, the amount charged for the medical care has been so small that there could be but one outcome—a reduction in either the amount or the quality of the medical services given, and in many instances, both these factors are involved. The manner of securing subscribers involves a practical application of the Principles of Medical Ethics, especially as these principles pertain to solicitation and unfair commercial competition.

It is my understanding that the Ross-Loos Medical Group was composed of a number of very competent physicians."

By Mr. Leahy:

Q. Did you believe that when you wrote it, Doctor?
A. I did.

Mr. Leahy (Reading): "As far as I know, the quality of medical care given seems to be good. I am unable to give you all the details of the operation of this medical group or their methods of securing subscribers. However, I am enclosing a copy of an article which appeared in the Los Angeles City Employees Magazine. I am also enclosing a copy of a pamphlet of Information for Subscribers of the Ross-Loos Medical Group.

It is my further understanding that the Ross-Loos Medical Group in Los Angeles entered into contracts with certain groups of municipal employees and others, under the terms of which medical services would be furnished by the members of the Ross-Loos group for certain stipulated sums. Furthermore, it is my understanding that each member of the groups concerned was required to pay a certain amount each week or month, and that this sum would be used to pay the cost of service rendered by the Ross-Loos clinic. I am informed that the Los Angeles County Medical Association objected to the operation of this plan, by the Ross-Loos group, and the charges were finally preferred against Doctors Ross and Loos. These charges were substantiated by the Council of the Los Angeles Medical Asso-

ciation, and on appeal, the California Medical Association upheld the action of the Los Angeles Medical Association whereby Doctors Ross and Loos were expelled from membership. This case was appealed to the Judicial Council of the American Medical Association. The decision of the Council may be found in the Journal of January 25, 1936," the volume stated. "You will note, however, that the Judicial Council decision expresses no opinion as to the guilt or innocence of the appellants in connection with any unethical practices alleged and charged against them.

If at any time you believe I may be of some assistance to you, I shall be pleased to help to the limit of my ability."

In 1935 the Bureau published a report entitled "Medical Service Plans," listing the service plans which had come to our attention throughout the United States in the form of state medical society plans, county medical society plans, and the various classifications of services which they gave, either for indigents or low-income groups, including post-payment and prepayment plans. In 1935 there were very few plans operated by the medical societies throughout the country for the prepayment of the cost of medical care. There were plans being operated by groups of different kinds. Perhaps they might be designated either consumer or producer prepayment groups, but there were only a few throughout the country.

I think I have seen Gov. Ex. 280. Gox. Ex. 279 is a letter from R. A. Swink, Executive Secretary of the Academy of Medicine of Cincinnati, in which he transmits to me the letter marked Gov. Ex. 280, relative to the proposal of Dr. George H. Cook in Cincinnati to organize a prepayment plan. Gov. Ex. 278 is a carbon copy of a reply which I made to Mr. Swink.

Defense counsel read Gov. Ex. 279 to the jury as follows:

Gov. Ex. 279 has been just identified as a letter dated March 20, 1936, from Mr. Swink, the Executive Secretary, to Dr. Leland, on the Academy of Medicine of Cincinnati letterhead:

"Some days ago Dr. Edward King, President of the Academy, wrote you for some information pertaining to the Ross-Loos Clinic at Los Angeles. We very much appreciated the information furnished by you.

In order that you might be acquainted with what has occurred here recently, I am enclosing a carbon copy of a letter sent to Charles S. Nelson, Executive Secretary of the Ohio State Medical Association, in which a fairly complete statement is given of just what has occurred to date. I feel certain you would be interested in knowing of this action.

If you have any special pamphlets, or can give me any other references that would enable us to make a more complete statement of organized medicine's viewpoint on the whole insurance scheme, I would very much like to have it.

Yours truly, R. A. Swink."

Defense Counsel read Gov. Ex. 280 to the jury as follows:

It is dated March 19, 1936, and numbered Gov. Ex. 280, on the same stationery head, directed to Nelson:

"Last fall Dr. George H. Cook, a graduate of the University of Cincinnati, but not a member of the Academy here, made it known to some of the members of Council and to others, that he had just returned from Los Angeles, where he had spent some months getting complete information on the operation of the Ross-Loos Clinic. He stated that it was his intention to organize a similar group in Cincinnati.

Reports of his activities were heard from time to time, mostly in the form of rumors, until early in February of this year when a letter was received from him by Council, together with a prospectus of his proposed group. In this letter, he asked Council to let him know what attitude would be taken toward members of the Academy who might become members of his group.

Immediately upon receipt of this letter and prospectus, the entire matter was referred for study to the standing committee on the Cost of Medical Care, of which Dr. Albert H. Freiberg is chairman. After many hours of consideration covering several meetings, this committee recommended to Council that it should reply to Dr. Cook by saying that a request such as he had made, could be considered only when presented by a member of the Academy; and secondly that if such a request is later made by a member, it would then be advisable for Council to call a special meeting of the Academy, so that the entire membership

could participate in the discussion and have a final vote as to the policy of the Academy in respect to this matter.

These recommendations were adopted by Council and Dr. Cook was accordingly notified of the action. Within a few days thereafter, a letter was received from Dr. E. E. Rhoads, a member of the Academy, stating that he was seriously considering the invitation to become a member of Dr. Cook's group and asking whether 'belonging to the George H. Cook Medical Group will in any way jeopardize my standing in the Academy.' Upon receipt of Dr. Rhoads' letter, Council called a special meeting and decided to make consideration of this matter a special order of business to come before the Academy at its regular meeting on March 10, 1936. A copy of notice sent to all members is enclosed herewith.

Interest in this matter attracted a large attendance at the meeting on March 10th. A rough count indicated that there were approximately 325 to 350 members present. As a result of thorough discussion on the part of Council at two special meetings prior to this meeting of the entire Academy, Council prepared a statement to be read by the President, Dr. King, by way of introduction to the entire matter and a statement of the issues involved.

After giving a brief history of the events leading up to the calling of the meeting, Council called attention in its statement to Article VI, Section 2 of the 'Principles of Ethics' of the A. M. A., and then informed the Academy that, in the opinion of Council, the thing for the members to do was to answer certain questions, with the understanding that those answers would become the rules which Council would feel obliged to enforce in a situation that might arise as suggested in Dr. Rhoads' letter. The questions on which Council desired an answer were these:

1. Does practice under a prepayment group plan such as is being here proposed, and which does not include all of the legally qualified physicians of the community, but restricts itself to a small group, constitute a violation of Article VI, Section 2 of the 'Principles of Ethics' of the AMA?

2. Shall membership in the Academy of Medicine of Cincinnati be withheld from physicians who are practicing in violation of this rule?

3. Shall violation of this rule by a member of the Academy constitute sufficient reason for the termination of his membership?

It is not necessary for me to relate the entire discussion that occurred at that point other than to say that a motion was immediaely made by Dr. Robert Carothers to the effect that practice under a prepayment group plan such as was being proposed, does constitute a violation of Article VI, Section 2 of the 'Principles of Ethics.' That motion was by way of saying yes to question No. 1. After prolonged discussion on the motion in which only one member, Dr. Samuel Iglauer, spoke in opposition to the matter, a rising vote was taken and practically everyone present voted in favor of the motion. There were 3 or 4 who voted against the motion and possibly 15 or 20 others who did not vote either way.

With the first motion disposed of, motions on the other two questions were immediately put and voted on, with similar results.

The enclosed clipping from the Enquirer on the morning following the meeting is indicative of the reports appearing in all the newspapers of the action taken. The next day after that is when the editorial appeared in the Enquirer entitled, 'A Danger Involved,' and in which the Academy was accused of 'boycotting' any physician who undertakes to give medical service on a group basis.

I trust that this rather lengthy review of the situation will be of interest to you and if you have any suggestions or comments to make, I am sure, Council will be very glad to receive them.

Yours truly,

R. A. Swink."

I did not try to give Mr. Swink, Mr. Nelson or Dr. King any advice with reference to this matter. The matter was completely within the jurisdiction of the local society. Gov. Ex. 278 dated March 25, 1936 is my letter which I wrote in reply to Mr. Swink.

Defense counsel read Gov. Ex. 278 to the jury as follows:

"I am greatly obliged to you for your letter with the enclosed carbon copy of your communication to Mr. Nelson. I am personally of the opinion that the Academy of Medi-

cine of Cincinnati proceeded in a wise course on the matter under consideration.

This Bureau is now preparing a publication on 'Economics and the Ethics of Medicine.' This publication will probably bear more directly than any other one we have on the question under discussion, however, I am unable to give you the date at which this will be ready for distribution. In the meantime, I am enclosing some publications of the Bureau in the hope that they may be of some help to you."

When I stated that I am personally of the opinion that the Academy acted wisely, I referred to the procedure that they had adopted in arriving at the end. They had made an investigation, they had framed their own questions, and they had put them to the vote of their own membership, and the membership had expressed itself. With that expression I had only an academic interest.

I received Gov. Ex. 259 from Dr. Conklin and I wrote Gov. Ex. 260 in reply.

Defense counsel read Gov. Ex. 259 to the jury as follows:

This is on the Medical Society of the District of Columbia stationery, and it is dated June 5, 1937, over the signature of Dr. Conklin, and addressed to Dr. Leland:

"I am enclosing herewith a plan that has recently come to our attention for development of prepayment medical service in governmental bureaus. The potentialities of such a plan, if and when it is put in force in the capital city, should be readily understood.

With hopes that I will have the pleasant opportunity of seeing you during the coming week, I am,"

Postscript:

"I regret that I was not 'at home' when you called at my office recently. I am hoping for better luck next time."

I called at Dr. Conklin's office several times. I remember that I called once and he was out. I don't connect it at all with Group Health, because I called on the secretary several times as a matter of courtesy and interest and on matters of medical society affairs, having nothing to do with Group Health. Defense counsel read Gov. Ex. 260, dated August

18, 1937, from Dr. Leland to Dr. Conklin, to the jury as follows:

"Since your letter arrived just as I was leaving the office for my vacation, I have had no opportunity to answer it until today.

The suggestion which I made at the committee meeting is, in my opinion, a very simple one, involving nothing but cash payments to those who wish to participate. It is based largely on the type of arrangement that has been in effect for many years and operated by health and accident insurance companies."

By Mr. Leahy:

Q. To what are you referring in that paragraph, Doctor?

A. I am referring to the principle of cash payments made by health and accident insurance companies on the basis of a contract between them and their policyholders, by which they agree to pay in cash directly to the insured the amount of any claims that are made against the company under a contract.

Q. Well, I notice you state, "The suggestion which I made at the committee meeting."

A. I made the suggestion at the committee meeting, which was in July of 1937, the suggestion to the Medical Society that they might take under advisement the idea of organizing a cash indemnity plan which would be similar to the cash indemnity plan operated by health and accident insurance companies, if they could qualify under the laws of the District.

Mr. Leahy (Reading):

"Briefly, the plan would be for any group who desires to spread the cost of medical care to organize a benefit association or a mutual insurance company. The dues or premiums per member would depend on the amount of benefits to be provided. Benefits would be paid in cash to the beneficiary. They should be limited to $250 or $400 or $500 in any one year, but the benefits for any illness should not exceed 75 to 80 percent of the total amount of the medical and hospital bills for that illness.

There would be no medical panel; every member would have the right to choose any physician in the District of

Columbia or anywhere else in the United States; there would be no designation of approved hospitals; the patient would be perfectly free to choose his own hospital or go to the hospital to which his physician ordinarily takes his patients; physicians in hospitals would submit their bills to the organization according to the regular schedule of charges.

The sole function of the organization would be to collect the dues or premiums from the members and to pay in cash to the members the amount of claims for medical or hospital services up to a specific limit for any one year and not to exceed 75 or 80 percent of the medical or hospital bills incurred for any single illness. Physicians and hospitals would then take their chances on collecting from the patients the amounts paid them for claims. There should be some sort of an identification card to indicate that the patient is a member of the organization. This would serve only to apprise the physician or the hospital that the patient would be reimbursed up to 75 or 80 percent for the services rendered.

If the District Medical Society chose, it might authorize a 10 or 15 percent reduction from the regular fees for members of such an organization providing such an organization would be willing to make a settlement with the patient and physician or hospital jointly. This is being done in some places, and apparently works entirely satisfactorily. In Iowa, for example, the reimbursements to members for the cost of hospitalization is made by check payable jointly to the member and the hospital. This affords an opportunity for the hospital to collect since the member cannot cash the check without the signature of the hospital.

If there are any further details in connection with this which you desire, I shall be glad to do my best to clarify such points as may not be entirely clear.

"Sincerely yours,"

And down in the bottom is marked: copy to Dr. Woodward.

The notation at the bottom shows that a copy was sent to Dr. Woodward.

I received Gov. Ex. 258 and Gov. Ex. 257 is my reply.

Defense counsel read Gov. Ex. 258 to the jury as follows:

Gov. Ex. 258 is a letter from Dr. T. J. Williams, Evanston and Chicago, Illinois, dated July 21, 1938, to the American Medical Association, Chicago, Illinois:

"GENTLEMEN:

Will you be kind enough to send me what information you have relative to the doctors' Donald Ross and Clifford Loos, private group clinic in Los Angeles, as well as the Trinity Hospital group in Little Rock, Arkansas, and other similar groups who provide medical service, hospitalization, drugs, services of specialists, etc., to the man and his family for a specified monthly payment.

Kindly send same to the above Evanston address. Thanking you,

T. J. Williams."

Defense counsel read Gov. Ex. 257 to the jury as follows:

July 25, 1938, from Dr. Leland to Dr. T. J. Williams, Evanston, Illinois:

"DEAR DR. WILLIAMS:

The Medical Service Plan of Trinity Hospital, Little Rock, Arkansas, is one type of several prepayment plans for medical care that have been attempted. The plan was inaugurated in 1931 and is operated by a staff of six physicians. Under the plan, six weeks of hospitalization, including operating room, anesthetics, and general nursing, as well as medical and surgical services, are offered for a rate of $2.50 a month for individuals; $2 a month for persons enrolled in groups; and $5 a month for families, regardless of size. Hospitalization is restricted to Trinity Hospital, and the medical treatment and surgical care are performed by the staff of Trinity Hospital only."

By Mr. Leahy:

Q. Do you recall where you got what purport to be the facts in that letter, Doctor?

A. No, I do not at this time.

Mr. Leahy (reading): "The Hospital does not appear in the American Medical Association Register, and the staff members are no longer associated with the local medical society. Solicitors are reported to be employed on a percentage basis to secure members from groups of employees in business organizations and by house-to-house canvasses.

The Trinity Hospital Plan has sold about 2,000 contracts covering about 5,000 people. Subscribers include wealthy persons in the community as well as factory employees,

and persons from towns as far as 140 miles from Little Rock. We have not been able to obtain any financial information concerning the plan other than that the premiums received from members paid 56.3 per cent of the charges for similar services rendered private patients which is approximately the same as if the members of the staff had accepted a 40 percent reduced fee schedule. Part of this reduction is said to be made up because most of the credit losses ordinarily incurred in private practice are reduced. The staff members have also been willing to participate in such a plan because additional income for special services could be secured from subscribers to the plan. Likewise, staff members do not provide free medical services for persons in the community."

By Mr. Leahy:

Q. To what do you refer, Doctor, where it says, "The staff members have also been willing to participate in such a plan because additional income for special services could be secured from subscribers to the plan"?

A. It means that the plan did not give complete medical service, but that certain items of medical care were charged for at regular rates and were not included on the regular monthly premiums stated.

Q. And those, added to the premiums stated, would make up the additional income which you speak about?

A. They increased the income to the organization.

Mr. Leahy (reading): "The objections to such an arrangement are the same as the objections to other types of contract practice which prohibit free choice of physician and rely on advertising or solicitation to secure patients. Aside from violating ethical principles which are designed to promote good medical services for the patient, such arrangements do not lower the cost of medical care. The advertised rate does not, as a general rule, provide for complete medical and hospital services and the plan is not supported solely by the dues collected from members. No insurance or prepayment plan which must add administrative costs can provide the same average services now received in private practice for lower than average charges. Either the services offered are not so complete or special charges are made for numerous services. It is also not uncommon to find that deficits are made up by the profits

from extra activities such as soda fountain, magazine, and drug sales or income from nonmembers.

There are several possible arrangements to assist persons to meet medical or hospital bills which avoid most of the objections to contract arrangements for such services. The essential feature of these plans is that the benefits are payable in cash. A number of mutual benefit associations and community health associations have been operating satisfactorily on a cash benefit basis. The July 2nd, 1938 issue of the Journal, page 59, contains the report of the reference committee on cash payments for medical services which was adopted by the House of Delegates. Under separate cover we are forwarding to you some of our publications in which the questions indicated before are discussed fully.

In reply to your inquiry regarding the Ross-Loos Clinic in Los Angeles, we are giving you some of the essential points in its operation:

The cost to the subscribers is $2 per month per subscriber, and there are some additional charges for other members of the family. In an address by H. Clifford Loos to the women of the American Farm Bureau Federation in Chicago, December 7, 1935, he stated that 'the entire cost to the subscriber for this service, including the charges that are made for dependents, hospitalization, drugs, etc., averages $2.68 per month. The cost of the medical group for hospitalization is 20.2 cents per subscriber per month.' The service is supposed to be an all-inclusive one covering a complete medical service, including hospitalization; there are, however, some extras and some cases excluded. The contract provides that the subscriber may choose any one of the physicians on the staff and the management of the plan claims that an effort is made to maintain a permanent family physician relation.

Statements have been made both ways as to whether the group 'contributes to the charity load in Los Angeles County in a degree proportionate to the other physicians residing in the county.' It scarcely seems probable that they do so contribute, but it would be necessary to get opinions direct from Los Angeles before any worthwhile conclusion could be drawn. If you will communicate with Dr. George D. Maner, Secretary of the Los Angeles County Medical Association, 1925 Wiltshire Boulevard, Los Angeles, California,

he will probably be able to give you more recent and more detailed information concerning the personnel and the activities of the clinic.

This information is given at your request and is confidential. Opinion is given merely as a business courtesy. No responsibility is to attach to the American Medical Association or its officers personally for information herein given.

Yours very truly,"

The Bureau has not opposed voluntary prepayment plans but has opposed plans which are made compulsory by law. The policy of the Bureau for voluntary prepayment plans has been to collect all information in order to be in a better position to assist those individuals or organizations that wish to organize plans for the benefit of low-income people. There are numerous individuals and groups, both in industry and in the community, as well as in state and county medical societies, that we have assisted, and that I have personally assisted in the development of prepayment plans. Some of those now in operation, such as the California Medical Service, adopted in 1938; the Michigan State Medical Society Plan; the New Jersey State Medical Society Plan, and several plans organized in three sections of the State of New York. We have opposed certain conditions under the contract practice of medicine when in opposition to certain of the sections of the Principles of Ethics of the AMA. As a result of a process of development over quite a number of years, ten principles have been developed, which were adopted in 1934 by the House of Delegates as a guide to county and state medical societies that undertook to organize prepayment medical plans. Principle 6 was modified in 1935 to read:

"In whatever way the cost of medical service may be distributed, it should be paid for by the patient in accordance with his income status and in a manner that is mutually satisfactory."

This amendment to Principle 6 operated to advance or assist in a better interpretation of the yardstick or measures that should be applied in the organization of prepayment arrangements, as the principle, prior to the amendment, stated payment should be made at the time the service was rendered, which is private practice. Members of the AMA

in fairly large number are conducting contract practice of medicine, probably several thousand. There are in the United States 350 medical groups, called group practice groups; only 17 of them are employing any form of prepayment medical plan, using instead fee-for-service plans.

My Bureau never took any position whatsoever concerning Group Health and has never even made an independent study of it. I realized that Dr. Woodward was making a very careful and continuous attempt to get information on it and I knew that any information that he was able to secure would be made readily available to me if at any time I needed it. The only report the Bureau has on Group Health is the article published in the Journal of October 2. Aside from the trip to Washington I have not cooperated or collaborated in any way with Dr. Woodward concerning Group Health. I had nothing to do with the preparation of his article in the Journal and didn't even know it was being written. In the correspondence received in evidence, and in other correspondence I have written, I had no idea of discouraging prepayment plans. I didn't conspire with anyone for the purpose of restraining trade in the District; for the purpose of restraining Group Health; for the purpose of restraining doctors on the staff of Group Health; for the purpose of restraining doctors not on the staff of Group Health in the District, or for the purpose of restraining the Washington hospitals in the business of operating such hospitals. I didn't discuss with anybody anything concerning the Washington hospitals and Group Health. I never approached anyone or advised anyone not to join Group Health as a member. I have never talked with any doctor on the staff of Group Health. I have never tried to do anything personally with anybody whatsoever on the medical staff or membership of Group Health, and no such idea ever entered my mind. The first time I ever saw the building in which the clinic of Group Health is located was about three days ago. I have never discussed the clinic.

Except the letters that came to me personally, I know nothing of the letters of the District Medical Society and had no information at all until I heard them read at this trial and the same as to the minutes of the meetings of the District Medical Society. I don't remember even being present with Dr. Woodward at any meeting of the District

Medical Society, aside from the meeting of the executive committee in July of 1937.

I am a Fellow of the American Public Health Association; a member of the American Statistical Association, the American Economic Association, the Royal Economic Society of London, and various medical societies. My Bureau and I are now personally engaged in the present national preparedness work conducting a census of physicians for the Committee on Medical Preparedness of the AMA.

Cross-examination.

By Mr. Lewin:

A copy of the Ireland letter (Gov. Ex. 295) was made for me and I assume it was sent to me. It is a fact that Gov. Ex. 295-A is from my files and is marked with my name. I may have read it, but I don't recall. The type of information contained in that letter falls under the jurisdiction of the Bureau of Medical Economics.

The first time I heard about Group Health was at the AMA convention about June 6, 1937 when Dr. Woodward spoke.

Q. And didn't you say that when you came down to Washington with Dr. Woodward on July 14, that the only information you had with regard to Group Health Association was what he had told you?

A. Well, I had learned in Atlantic City.

Q. From Dr. Woodward?

A. Yes.

Q. Is that right?

A. To the best of my recollection.

Q. And isn't it also a fact that before you went down to Atlantic City Dr. Conklin had sent you the confidential prospectus of the health plan for Washington?

A. Well, I received a prospectus, but I didn't connect the two in any way.

Q. Well, did you know——

A. They were named—they had different names.

Q. Well, didn't it outline a group practice plan on a prepayment basis?

A. I had no way of connecting the two, the prospectus that he sent with the H.O.L.C. or Group Health Association.

Q. Did you know of any other plan in Washington?

A. No.

Q. At that time?

A. No.

Q. Didn't his letter tell you that it was in relation to a prepayment medical service in government bureaus?

A. Well, there might be more than one.

Q. Was there more than one?

A. I didn't know.

Q. Do you mean to say you made no connection between that plan that you received from Dr. Conklin——

A. That's right.

Q. —and the plan that was under discussion at Atlantic City?

A. That's right.

Q. Didn't Dr. Conklin write you, "I am enclosing herewith a plan that has recently come to our attention for development of a prepayment medical service in governmental bureaus"?

A. (The witness nodded his head.)

Q. "The potentialities of such a plan, if and when it is put in force in the Capital City, should be readily understood"?

A. Yes, sir.

Q. And didn't you read that plan?

A. I did.

Q. And when you came down here on the 14th didn't you connect that plan which you had read with the plan that you were asked to come down here and advise the District Medical Society on?

A. No, I did not.

Q. No connection between the two?

A. No, sir.

Q. You thought it related to some other plan than Group Health Association?

A. Yes, sir.

Q. What other plan did you think it related to?

A. Well, it had different names, some other—some other federal employees, but I have no way of knowing who.

Q. Wasn't it referred to as "a cooperative medical service plan"?

A. Yes.

Q. Did you ever find out that there was any other cooperative medical service plan that fitted that description except Group Health?

A. Well, I didn't feel that that description fitted Group Health, with the information that I had at that time.

Q. Did you make any later study to find out what was referred to in that prospectus?

A. No. That is the last I ever heard of that.

Q. Didn't you ever at any time connect that prospectus with Group Health Association?

A. No.

Q. Didn't you refer to that prospectus in a written report which you made to Dr. West in connection with Group Health Association?

A. I don't recall that I ever made a written report to Group Health.

Q. All right. We will come to that in a moment.

I came to Washington with Dr. Woodward to confer with the District Medical Society. I was formally authorized to come to Washington and advise the District Medical Society with regard to Group Health. I did come to Washington for that purpose and I did advise the District Medical Society. I did talk at the July 14th meeting.

Q. And didn't you know that Dr. West had suggested another cooperative plan to be set up by the District Medical Society to offset the effect of Group Health Association?

A. I knew that after I returned home.

Q. When you wrote to Conklin and explained your plan, you knew that what he wanted was the details of a plan to offset Group Health Association, didn't you?

A. I don't believe I did at that time.

Q. Oh, you said you knew it after you got home. And you wrote Conklin in August, didn't you, and told him in detail what you had proposed when you were down there advising the District Medical Society?

A. Perhaps I did.

Q. All right. Then you knew that what you were advising them was to set up a plan for the first time, a prepayment plan, in competition with Group Health Association; isn't that right?

A. No, sir.

Q. Didn't you know that Dr. West had suggested that the District Medical Society, for the first time in its history, organize a prepayment plan to offset Group Health Association?

A. That wasn't my understanding of it. I understand that it was an outgrowth of a plan that they had had in operation for some two years and wanted to go on further with it.

Q. Did you have a talk with Dr. West about that time?

A. Oh, I had lots of times. I presume so.

Q. Well, you say you found out that that was his plan when you got back to Chicago. Did you find it out from Dr. West?

A. I don't know the day; I heard Dr. West mention the fact that he had been here and made some suggestions.

Q. Yes. And didn't Dr. West tell you that his suggestion was to set up a plan in competition with Group Health?

A. He may have. I don't recall it now.

Q. Well, does this refresh your recollection, his letter to Verbrycke (Gov. Ex. 152), which is in evidence (indicating)?

The Court: Point out the part you have in mind.

Mr. Lewin: I have. I have done so.

The Witness: Yes.

By Mr. Lewin:

Q. Didn't he say this in that letter: that "If I were a member of the committee of the District Society I would want to consider the advisability of organizing a sort of co-operative movement under the auspices of the Society to offset the effect of the cooperative movement that is now being promoted by certain agencies in Washington"?

A. That's what he said in the letter.

Q. Yes. And then when you advised Conklin in August of 1937 (Gov. Ex. 260), you knew you were advising him of your pool for that purpose, didn't you?

A. That isn't the purpose I had in mind.

Q. And wasn't the suggestion that you made for a co-operative movement simply a collection agency for private practice?

A. No, not that at all.

Q. Wasn't that the effect——

A. No, sir.

Q. —of what you wrote Dr. Conklin?

A. No, sir.

Q. Didn't you suggest that there be a pool of money set up by prepayment and out of that pool of money doctors be paid on fee-for-service basis?

A. It was a cash indemnity prepayment plan.

Q. Yes. And it planned, didn't it, that the patient would receive the cash?

A. That is right.

Q. And pay the same fee for service—doctors on the same fee-for-service basis?

A. You may speak of it that way.

Q. And didn't contemplate any group practice whatever?

A. No.

Q. Isn't that right?

A. That's right.

Q. Yes. Well, now, you said, I think, on your direct examination, that when you went back to Chicago you did nothing more except to make an oral report to Dr. West?

A. That's right.

Q. You stand on that testimony?

A. There is a report that carries my name.

Q. Well, didn't you authorize it? I show you the report (Gov. Ex. 200).

A. Yes, sir.

Q. Didn't you and Dr. Woodward make a written report to Dr. West?

A. I didn't collaborate with Dr. Woodward.

Q. Do you mean to say that Dr. Woodward acted without your authority?

A. Well, he had a perfect right to.

Q. Is that your testimony? He had a perfect right to. Then, he was authorized to make this report?

A. I put my name—I authorized him to put my name on it.

Q. Oh. You read it, I suppose, did you not?

A. I think I must have, yes, sir.

Q. And weren't you responsible for this little statement at the end, in writing to Dr. West, that "this Group Health Association is obnoxious to public policy, for obvious reasons"?

A. No, sir. That's not my language.

Q. Wasn't that your idea?

A. That's not my language.

Q. Maybe not your language. Isn't that what you wanted to stand behind as your report?

A. I would stand behind it, yes.

Q. You would stand behind it?

A. Yes, sir.

Q. And that is what you reported to Dr. West?
A. Yes, sir.

Mr. Kelleher: The reference to prospectus in there.

By Mr. Lewin:

Q. I will ask you to look at it again and see if that is not a reference to that prospectus that you said you never connected to Group Health Association.
A. Yes, sir. The first thing.
Q. Yes. Very first thing?
A. That's right.
Q. It says, this, doesn't it? "A prospectus for a plan for a cooperative medical service on a periodic payment basis for federal employees and their families in Washington was circulated sometime ago. The prospectus is not dated, and the time of its issue is not known. It was circulated anonymously." And then you describe the plan, don't you?
A. (The witness nodded his head.)
Q. And that's the plan that you think is Group Health, don't you?

Mr. Richardson: Now you mean?
Mr. Lewin: Then.
Mr. Richardson: Well, say then.
Mr. Kelleher: Oh, he understood the question.
Mr. Lewin: I'll say now and then, both.
The Witness: Well, I can't be sure that this cooperative —plan for cooperative medical service is the same prospectus that I received in the letter from Conklin.

Q. Well, do you know of any other prospectus that was headed that way?
A. No, I do not.
Q. It has the same heading, doesn't it?
A. As far as I know.
Q. And doesn't that description you give of it fit it on all fours?
A. It fits G.H.A.
Q. Doesn't it fit prospectuses that you had received from Conklin as early as June 5?
A. I don't remember the prospectus.
Q. And had read before you went to Atlantic City?
A. I don't remember the prospectus.

Q. Well, did you find it?

A. If I could see the prospectus I could tell.

Mr. Lewin: All right. You may see it. Let's give him the prospectus.

By Mr. Lewin:

Q. Here is a photostatic copy of the prospectus (Gov. Ex. 104). Is that the one you received from Conklin?

* * * * * * * * *

The Witness: It is still my opinion that this does not necessarily refer to Group Health Association.

By Mr. Lewin:

Q. This is the prospectus, is it not, that you referred to in your joint report with Dr. Woodward to Dr. West, dated July 16?

A. Yes, sir.

Q. It is. And you were reporting on Group Health at that time and you intended so to report?

A. We were reporting on more than Group Health.

Q. Were you reporting on a different plan than Group Health?

A. Reporting on information that we'd had up to date.

Q. Well, had you had any information at that time that there was another plan other than Group Health of that same character here?

A. Apparently from this.

Q. Well, now, you came down here on the 14th. Did you hear any discussion of another plan here?

A. We heard discussion of a plan for federal employees.

Q. And that's what you thought was Group Health, isn't it?

A. Not necessarily. There could have been two.

Q. Well, now, what is your testimony? Were there two that were discussed or was there one Group Health?

A. There was one about which there was a considerable amount of doubt as to whether it would merge into Group Health or whether it was another outgrowth.

Q. You mean to say that was at this discussion with the District of Columbia doctors.

A. At a committee meeting, so far as I can recall.

Q. There was a discussion of two plans in the District of Columbia for prepayment basis—of group practice on a prepayment basis?

A. I think I recall a discussion of a plan about which there was considerable doubt.

Q. Well, that was Group Health Association, was it not?

A. That was another plan for group—for federal employees, of a very vague nature.

Q. Well, whose plan was that?

A. This one here which we're—about which we have the prospectus.

Q. Well, did you point out in your report to West that there were two plans that you considered on your trip to Washington and that conference that you had with the District Medical Society (handing Gov. Ex. 200 to the witness)?

A. We reported to Dr. West that there was a prospectus, and we also had certificates of incorporation of Group Health.

Q. Well, what was the difference between the two?

A. A vast difference.

Q. What was the difference?

A. One was a prospectus, and the other were certificates of incorporation.

Q. Well, what was the difference in the plan, between the two?

A. Well, they are very similar as far as the——

Q. Well, what was the difference?

A. Well, I can't tell you the difference except——

Q. Well,——

A. Unless I study it over.

Q. Don't you remember any differences? You say they were two different plans?

A. Yes, sir.

I am a full time, salaried employee of the AMA. I advised the District Medical Society in July. I had not discussed the situation with Dr. Woodward on the train. I hadn't seen the charter of Group Health at that time. I saw it after I had been to Washington. At the meeting I offered a suggestion, entirely separate from Group Health, for the information of those who were considering the development of a prepayment plan for the District Medical Society.

Q. All right, after you were back in Chicago, did you tell Dr. Woodward that you would be willing to elaborate for the District Medical Society or its committee anything you had told them that was not clear?

A. I don't recall telling him anything in those words, but I might have.

Q. And did you tell Dr. Woodward around August 18, 1937, that you didn't at that time have any further plan for forestalling Group Health Association?

A. I don't recall any such conversation.

Q. Would you say you hadn't told him that?

A. No.

Q. You may have told him that?

A. My answer is the same as before.

Q. Just what?

A. That I don't recall any conversation of that kind.

Q. But you may have done so?

A. I don't recall it.

Q. Let me read you Gov. Ex. 202, which is in evidence, a letter from Dr. Woodward to Dr. Conklin, dated August 18th, 1937:

"I understand from your letter that everything that was said and done by Dr. Leland and me in the course of our recent conference with the Committee then having Group Health under consideration is now before the committee newly appointed to study the matter.

If there is anything in what either of us said or did that was obscure or calls for explanation or elaboration, I shall be glad to undertake to explain or elaborate it for the information and guidance of the committee.

Neither of us has at the present time any further proposal looking toward forestalling the growth of the Group Health Association, or towards preventing the organization of similar groups in the District of Columbia."

Did you give Dr. Woodward the information on which he could have based that letter?

A. Let me see it.

(Thereupon Court and counsel engaged in an informal conference at the bench, which was not reported.)

By Mr. Lewin:

Q. Dr. Leland, isn't it a fact that you kept in contact with the District Medical Society or its representative with

regard to Group Health during the late summer or early fall of 1937?

A. No, sir.

Q. Didn't you come down here some time in October and go to Dr. Conklin's office and have a conversation with him in regard to Group Health Association?

A. I was in Washington some 12 or 14 times during 1937 and 1938, and all but one time of which I have any recollection now, were on other matters; other association matters.

Q. Would you deny that you went to see Dr. Conklin in his office in October with regard to Group Health Association?

A. I have no recollection of seeing him about Group Health, but I presume I did go to his office because that was my custom to go to the office of the secretary of the Medical Society while I was in the city.

Q. I would ask you whether you went to see him on this subject.

A. I have no recollection.

I do not know Dr. Earl Templeton. I don't remember making any suggestion to Dr. Templeton about employing a public relations counsel.

Q. • • • Let me read this excerpt from the minutes of October 6th, 1937 (Gov. Ex. 37):

(Excerpt)

"Dr. E. R. Templeton said that Dr. Leland suggested," and this was in connection with the matter of employing a public relation counsel:

"Dr. Leland suggested that the wisest thing would be to employ a former newspaper man."

Does that refresh your recollection as to your ever having made that statement?

A. What was that?

Q. That you suggested a former newspaper man as the one to be the Society's public relations counsel?

A. As I recall it now, the question which I discussed with someone, whom I don't recall at present, was in connection with the employment of an Executive Secretary, and I did make some suggestions on that.

Q. Did you make this suggestion that Dr. Templeton said you did?

A. I don't recall the exact statement, but I did have some discussion concerning the method of going about the employment of an executive secretary for the Society.

Q. Now, Dr. Leland, you knew in the fall of 1937, didn't you, that the Medical Society of the District of Columbia believed it to be the duty of the American Medical Association to oppose Group Health Association with all its might?

A. I don't know that I would go quite that far.

Q. Didn't you hear that?

A. I heard them make some statement that they would like some assistance.

Q. And that is all you heard?

A. I wouldn't be sure, but that is all I recall at the moment.

Q. Didn't you hear them say that it was the duty of the American Medical Association to "combat" Group Health Association vigorously?

A. It is possible, but I do not recall it.

* * * * * * *

Q. Didn't you hear this resolution read by Dr. Hooe at that meeting on November 6th, which you attended with Doctors Hooe, McGovern, and Woodward:

"The Medical Society of the District of Columbia at its regular meeting held November 3rd, 1937, adopted the following resolution.

1. That inasmuch as the movement threatens to be nation-wide in its scope, and affect every component organization of the American Medical Association, it is the duty of the American Medical Association to oppose immediately with all its might this entering and possibly illegal wedge to the socialization of medicine,

2. That in view of the tremendous import of the Group Health Association movement to the membership of the Medical Society of the District of Columbia and also to the profession at large and to the public, it is the opinion of the Medical Society of the District of Columbia that it is the duty of the American Medical Association to combat vigorously Group Health Association, Incorporated."

Didn't you hear that resolution read at that meeting?

A. November 6th?

Q. Yes.

A. I think I did, yes.

Q. And you were one of these "proper officials" of the American Medical Association that was being asked to do this?

A. I was at the meeting.

Q. Will you answer my question: Weren't you one of the proper officials as referred to in that resolution?

A. I think so.

Q. And you knew also, didn't you, that there wasn't any question of the jurisdiction of the American Medical Association to interfere with the local society in this case, was there?

A. I don't quite understand the question.

Q. Didn't you say on your direct examination that the AMA held aloof and had no jurisdiction over these local bodies, wasn't that your testimony?

A. I don't think so; it might have been.

Q. As a matter of fact, you knew at that time that the District Medical Society had expressly waived any such question and had conferred jurisdiction over this matter on the American Medical Association?

A. I didn't know that.

Q. Didn't you know that it had passed a resolution that they waived any question of regional interference on the part of the AMA?

A. I didn't know that.

Q. What is meant by "waiving regional interference"?

A. I can't give you a legal definition.

Q. I am not asking for that: What did it mean to you?

A. I don't recall ever hearing it read.

Q. All right, let me continue reading it.

"Thirdly, That the Medical Society of the District of Columbia waives any question of regional interference by the American Medical Association.

4. That the American Medical Association give a definite and immediate expression of its intended action in this matter."

Did you hear that resolution read?

A. I did.

Q. That was the resolution that you gentlemen were assembled there to discuss?

A. In part.

Q. And didn't you hear Dr. West speaking for you gentlemen, and the American Medical Association, say that in answer to that last request that the AMA had been fighting this thing; he thought it had been fighting it even before the District Medical Association got interested and it would continue to do so until it was called off?

A. I heard that.

Q. Did you object to that?

A. I said nothing.

Q. Did you intend silence to be consent?

A. There wasn't anything for me to say.

Q. You think it was decided for you. What were you there for? Wasn't it to discuss this very question?

A. Not necessarily.

Q. Did you tell Dr. Hooe and Dr. McGovern that you were not in sympathy with what had been expressed by Dr. Hooe and Dr. West as being the policy of the AMA?

A. No.

Q. Did you know at this time that the committee of the District of Columbia Medical Society had met and decided to bring proceedings against Doctors Lee and Scandiffio because they were members of the staff of Group Health?

Mr. Leahy: I object to the form of the question.

Mr. Lewin: On the ground that it is leading; this is cross-examination.

Mr. Leahy: No, because you are not bringing in the ground on which the District Medical Society did bring these disciplinary proceedings.

Mr. Lewin: If there is one thing that is clear in this case, that is.

The Court: The question then is whether he knew they were bringing disciplinary proceedings because of their connection with Group Health?

Mr. Leahy: It is not that at all; it is because of their violation of the articles of the constitution under which the local society regulated the conduct of its members. I object to the statement that it was because of something which is not in evidence and which is contrary to the fact and the evidence.

By Mr. Lewin:

Q. What is your answer?

A. The first time I heard anything about or the names of these two physicians was at this meeting.

Q. Did you hear that the committee of the District Medical Society had brought disciplinary proceedings against those two doctors because of their connection with GHA?

A. Whatever was reported at that meeting I heard.

Q. Can you answer my question?

A. I don't recall the wording.

• • • • • • •

Q. I would like to know whether you didn't hear and realize at that time that the committee of the District Medical Society brought disciplinary proceedings against Doctors Lee and Scandiffio because of their connection with GHA.

A. I don't recall the exact language but whatever was reported by those gentlemen at that meeting I heard.

Q. Didn't you know in substance that very thing?

A. I didn't know it.

Q. Didn't you know it at the very start of that meeting?

A. No, sir.

Q. Now, I am going to read you the third paragraph of that conference and see if that doesn't refresh your recollection. The first two paragraphs deal with the resolution that I have read you. Here comes the very first business of that meeting:

"The operations of Group Health Association, Inc., began on Monday last. Two men who contacted with Group Health Association, Inc., were members of the Medical Society of the District of Columbia, and the third had sent in his application which had been withdrawn in the past ten days. There is nothing to be done about this third member at the present time. The resignations of the other two were received by the Medical Society of the District of Columbia within the week. A letter was sent to each of them asking him to appear before the Compensation Contract and Industrial Medicine Committee. They didn't appear but the committee received a communication from one of them.

The Committee unanimously recommended to the executive committee of the Medical Society of the District of Columbia that disciplinary measures be taken."

Did you hear that?

A. My answer is as was stated previously. That is the first I heard anything of that instance.

Q. You did hear it then?

A. Yes.

Q. Did you object to it then?

A. No, sir.

Q. Didn't that strike a responsive chord in your mind with regard to your own attitude as to such doctors?

A. I don't understand.

Q. Didn't you believe that that statement was a wise course to pursue on the part of the District Medical Society?

A. The jurisdiction lies entirely with the District Medical Society and if they believed they had charges to prefer against any physician because of the violation of some of their regulations that was the proper thing to do.

Q. You knew that they were there seeking your advice for their guidance?

A. Yes.

Q. And you knew this was the first business they took up with you?

A. Yes

* * * * * * *

Q. Didn't you regard similar proceedings against doctors similarly situated as a wise course to pursue, and hadn't you similarly instructed a local medical society to pursue the same course in that case?

A. Not that I recall.

Q. Hadn't you been told by the local society in Cincinnati that a Dr. Cook who had been with the Ross-Loos Clinic had come back to Cincinnati and wanted to start up a similar clinic in Cincinnati?

A. I had had information to that effect, yes, sir.

Q. Yes. And didn't that local society write you and ask you for information about the Ross-Loos Clinic and any experience which would guide them in handling this matter?

A. They asked me for information.

Q. Well, was my statement correct (handing a photostat to the witness)?

A. Yes, sir.

Q. And didn't you respond to that letter?

A. I did.

Q. And didn't you tell them two things about the Ross-Loos Clinic: one, that it was your understanding that the Ross-Loos medical group is composed of a number of very competent physicians; and, as far as you know, the quality of medical care seems to be good?

A. Yes, sir.

Q. And secondly this: it is your understanding that each member of the group concerned was required to pay a certain amount per week, prepayment plan, and you were informed that the Los Angeles County Medical Association—which, by the way, is one of your component societies, is it not?

A. Yes, sir.

Q. —objected to the operation of this plan by the Ross-Loos group, and that charges were finally preferred against Doctors Ross and Loos. You told them that, didn't you?

A. Yes, sir.

Q. And you told them that those charges were substantiated by the council of the Los Angeles Medical Association, did you not?

A. Yes, sir.

Q. And you told them that on appeal the California Medical Association upheld the action of the Los Angeles Medical Association whereby Doctors Ross and Loos were expelled from membership?

A. Yes, sir.

Q. And you told them that that had been appealed to the AMA, did you not?

A. Yes, sir.

Q. And you told them that the AMA had made a decision which expressed no opinion as to the guilt or innocence of the appellants in connection with any unethical practices alleged and charged against them?

A. Yes, sir.

. . . . . .

Q. Did you intend to leave the impression with this jury yesterday, with regard to that appeal, that the American Medical Association on appeal had exonerated Ross and Loos?

A. I intended to leave the impression that the Judicial Council of the American Medical Association had reversed the actions in so far as procedure was concerned.

Q. Yes. Did you intend to leave the impression that they had exonerated Ross and Loos?

A. They had no—the question of ethics did not enter into the action of the Judicial Council.

Q. Yes. It was purely a procedural question. And isn't it true that they expressed no opinion as to the guilt or innocence of those appellants?

A. That is right.

Q. And didn't you say so in this letter?

A. I did.

Q. All right. Now, they were the two bits of information that you supplied, are they not: first, that the Ross-Loos Clinic was giving, as far as you know, competent care of competent physicians; and, secondly, that these two men had been expelled from your local societies in California?

A. That is right.

Q. And you gave that to them as information for guidance of the Cincinnati society, did you not?

A. I gave them information that they requested.

Q. Yes. You were responding to his request for information to guide them, weren't you, in handling their matter?

A. That's right.

Q. All right.

A. That's right.

Q. Now then, weren't you informed that after they got your information they had a meeting in Cincinnati, and they decided that any member—no; they first decided that anybody who ran a clinic like the Ross-Loos Clinic would be guilty of unethical practice and violating your Society medical ethics? Didn't you hear that?

A. I didn't hear it.

Q. Weren't you told that——

A. No.

Q. In the letter?

A. Yes, sir. I read it.

Q. All right. And weren't you also told that they had passed a resolution that in that event nobody could join their society who had any connection with that kind of an organization?

A. They had taken a vote on it, yes, sir.

Q. You were told that, weren't you?

A. Yes, sir.

Q. And you were told also that they had taken a vote on it and passed it, that no member of their society who had anything to do with that kind of an organization could remain a member of their society?

A. That's right.

. . . . . .

Q. Now, Dr. Leland, one more question with regard to the Cook situation: Isn't it true that when you got that information as to what the local society did in that case, you wrote back to them and said that you regarded that as wise proceedings, or words to that effect?

A. Exactly.

Q. Now, didn't you feel the same way when you heard Dr. Hooe tell you that on somewhat similar grounds similar proceedings were being brought against Doctors Lee and Scandiffio?

A. I think the two were quite different. The one in Cincinnati was an expression of my satisfaction over the fact that the Cincinnati Academy of Medicine had investigated the situation itself and had voted upon the issues and had settled them within its own jurisdiction.

Q. Do you mean by that to say that your only interest in that thing was as to a matter of form and not as to a matter of substance?

A. I had interest in the substance, but the reference I made in my letter was to the matter of procedure, as I said. Had proceeded wisely.

Q. But you did feel the same satisfaction with regard to the substance that had been achieved, didn't you?

A. The substance hadn't entered my—wasn't expressed in the letter at all, as far as I recall.

Q. Although you had been asked for information and experience to guide them in what they were doing?

A. Well, that was prior to the Society's action.

Q. All right, sir. Now, you learned also at that meeting, did you not, that there had been an attempt on the part of the local Society to influence the local hospitals against Group Health Association?

A. I learned it the first time then.

Q. Yes. And it was discussed rather fully there, wasn't it?

A. I think so.

Q. Yes. And again did you express any disapproval of that course?

A. I expressed no—made no expressions of any kind during the meeting.

Q. Even though you knew those men were there to get your advice about the subject matters that they brought on?

A. That's what they came for.

Q. And did you hear any criticism of it from your colleagues, Dr. West and Dr. Woodward?

A. I did.

Q. And wasn't that criticism that they didn't know whether such a policy could be effected? Wasn't that Dr. West's criticism, in substance?

A. I think he made more criticism than that.

Q. Yes?

A. As I recall it, he questioned whether it was a wise thing to do.

Q. Now you have an independent recollection now of what transpired at that conference?

A. Oh, I have heard that read. I have read it several times since the trial began.

Q. All right. You look at that. You look at this and see if this doesn't refresh your recollection (indicating Gov. Ex. 117). Do you have any other information except what is contained here?

A. None that I recall independently.

Q. All right. And isn't this what happened: (reading)

"Dr. Hooe: In the matter of the HOLC what is your future program?

Dr. West: It is just exactly the same as it has been all the time. We shall continue fighting it every way we can. We are going to get all the help we can get. We are at least going to keep on until we are instructed otherwise.

Dr. Hooe: The executive committee recommended that a letter be addressed to the medical boards of the various affiliated hospitals in Washington calling attention to the HOLC health group insisting that the hospitals take cognizance of it and, among other things, calling attention to the fact that the physicians employed by such groups are not acceptable to the Medical Society of the District of Columbia.

In reply to Dr. McGovern's question as to how far the Medical Society of the District of Columbia might go in controlling the hospitals, Dr. West expressed some doubt that the Society can effect such control."

Did you get anything more from Dr. West in response to that question?

A. I think there is more——

Q. Is there?

A. —later on.

Q. Will you find it for me?

A. Right there (indicating).

Q. Where? You are pointing to what Dr. Woodward said, or Dr. West? Oh, yes.

(Reading:)

"Dr. Hooe: Is it not in your opinion most reasonable that the hospitals should acquiesce in this matter?"

And Dr. West said, "It is reasonable that they should do it, but as to whether or not they will, that's another question. Suppose they don't?"

Is that all Dr. West said?

A. I don't recall any more that he said on that subject.

* * * * * * *

Q. Now, did you hear Dr. Hooe say this at the end of that colloquy:

"At a meeting of the group of the Medical Society of the District of Columbia last Sunday night"——

Last Sunday would be October 31st, wouldn't it? This was November 6th.

A. Yes, sir.

Q. —"it was brought out that all the civilian hospitals in Washington except probably one had fallen right into line, which was very gratifying."

Now, when Dr. Hooe said that, didn't that mean to you that at least eleven private hospitals here in Washington had taken steps in line with the District Medical Society in opposition to Group Health Association?

The defendants objected on the ground that it was immaterial, irrelevant and incompetent and argumentative. Objection overruled and exception allowed.

Q. What is your answer?

A. My conclusion on that would be that they had seen fit to arrange their affairs in accordance with the resolutions and suggestions of the Medical Society. Whether they did that in connection with GHA I wouldn't know.

Q. Well, is that quite true, Doctor? Is that fair? Was there anything else that was being discussed with regard

to the hospitals except Group Health Association (handing a photostat to the witness)?

A. That was certainly one issue, but there may have been other issues.

Q. There may have been. Was there any other issue?

A. I don't know.

Q. You don't know of any other?

A. From this record, do you mean (indicating)?

Q. No. From this record or from any independent recollection which you may have. Was there any other issue there being discussed with regard to the hospitals except to keep Group Health doctors out of them?

A. Well, the wording of this report doesn't indicate whether the matter was solely in connection with Group Health Association or not.

Q. Well, now, Dr. Leland, does it indicate that there was any other subject matter except Group Health Association and the hospitals that was the subject of that colloquy?

A. I don't know whether there was or not.

* * * * * * *

Q. All right. Now, Dr. Leland, did you attend the meeting of the secretaries of the local societies held in Chicago, November 18 and 19, 1937, I believe?

A. Yes, sir.

Q. You did?

A. I think so, as well as I can recall now.

Q. And you knew that Group Health Association was to be a subject matter discussed there, didn't you?

A. I didn't know it in advance.

Q. Didn't you? Didn't Dr. West say that it was going to be, at this meeting of November 6th?

A. Oh, yes. I recall now.

Q. Didn't Dr. West say, "In thirteen days there will be a conference of secretaries and editors of the constituent state Medical associations, at which many other officers of constituent state and some component county societies will be present. The whole story of the H. O. L. C. movement will be brought before the conference, and the point of view of the members of the conference can be obtained and presented better than by spending money in writing material. The members of the conference will be given the entire picture, and Dr. Conklin and Dr. Yater, members

of the conference, will be given full opportunity to say anything they want to say"?

A. That is correct.

Q. And didn't you know that Dr. West was specifically authorized by resolution of the board of trustees to explain the whole matter of the activities of Group Health Association before the conference of secretaries of constituent state medical associations and editors of state medical journals on Friday?

A. He was.

Q. He was. And didn't he actually appear with you before that meeting?

A. I don't quite understand what you mean?

Q. Didn't he go to the meeting with you? Wasn't he there, too?

A. Well, I don't know that he went with me.

Q. Oh, well.

A. He was at the meeting.

Q. That is right. He was at the meeting.

A. Yes, sir.

Q. And didn't he discuss Group Health Association and the AMA's attitude toward it before them?

A. As I recall it he did.

Q. And weren't Doctors Conklin and Yater, defendants in this case, representing the District Medical Society there?

A. I believe so.

Q. Did they participate in that discussion with regard to Group Health?

A. As nearly as I can recall, they did.

Q. Did you do it, too?

A. I don't recall that I made any discussion.

Q. Yes. Was Dr. Holman Taylor, this gentleman you say was secretary of the State Medical Society of Texas, there?

Mr. Leahy: I object. It is immaterial, collateral.

The Court: He may answer that question.

The Witness: I presume he was there. He was a very regular attendant at those meetings.

Q. And weren't you informed shortly after that that Dr. Conklin had brought Dr. Selders' connection with Group Health to the attention of the societies in Texas?

A. I have no recollection of anything of the sort.

Q. Well, didn't you get a copy of Dr. Taylor's letter to the Board of Censors of the Harris County Medical Society (handing a photostat to the witness)?

A. Well, if I did I paid very little attention to it.

Q. Well, did you get it?

A. The stamp of the Bureau of Medical Economies is on it.

Q. Your name is on it at the top, isn't it?

A. That's not my handwriting.

Q. Well, would you say you got it or didn't get it?

A. I did get it.

Redirect examination:

I was asked on cross-examination whether I gave advice to District Medical Society with reference to public relations counsel and I said the advice which I gave was with reference to an executive secretary. I don't remember anything being said in addition to what is contained in the transcript of the Chicago meeting of November 6 (Gov. Ex. 117). I have no independent recollection of Dr. Woodward suggesting anything at that conference other than that the local society have competent counsel to advise it as its primary move is clearly to see whether the local District Attorney, Corporation Counsel, Board of Licensure or the Insurance Commissioner, will act on the facts.

Recross-examination:

Q. Did not Dr. Hooe ask what they could say to their colleagues back home, the District Medical Society?

A. I don't remember whether he did or not.

Q. Did he say (reading Gov. Ex. 117): "Can we say that we have the backing of the American Medical Association in that?"

A. Yes, sir.

Q. And did Dr. West say: "You can say so very definitely, as that is absolutely in keeping with the policies of the organized medical profession of this country"?

A. That was said.

Q. Did Dr. West say this in response to Dr. McGovern: "Dr. McGovern. There is immediate sentiment of the Medical Society of the District of Columbia to formulate some plan." Was he not discussing some cooperative prepayment plan there?

Mr. Leahy: I object. The paper speaks for itself.
The Court: I think that is true.

By Mr. Lewin:

Q. Did not Dr. West say this: "I do not know whether or not you remember that I suggested, when in Washington some time ago, that you give the idea some consideration, but after thinking about it later I decided that probably I should not have offered that suggestion, because you already formulated a plan and I am not convinced that that plan did not have something to do with the stimulating of this HOLC movement. A plan almost inevitably tends to create a sentiment for the formation of other similar plans."
A. He said that.
Q. Did he not also say this——

The Court: Are you asking him what the paper says?
Mr. Lewin: I thought you asked me to do that.
The Court: Point it out to the jury yourself. Let us not take up so much time. That is what I suggested.
Mr. Lewin: I did not know what procedure your Honor wanted me to follow.
The Court: I thought if there was anything there that was contrary to what opposing counsel said about it, you might point it out.

Mr. Lewin (reading): "Dr. Hooe. In the matter of HOLC, what is your future program?
Dr. West: It is just exactly the same that it has been all the time. We shall continue fighting it in every way we can. We are going to get all the help we can get. We are at least going to keep on until we are instructed otherwise."

And then, after Dr. Hooe had outlined the situation, Dr. West said (reading further):

"Dr. Hooe has not made one statement of any kind that the American Medical Association has not fully considered and acted on where possible."

Thereupon the defendants stated to the Court that they desired to prove that Group Health was the recipient of subsidies during the period involved in the controversy, from the Twentieth Century Fund and associates of the Twentieth Century Fund, and bearing on the question of the approval or disapproval of Group Health by the local

Medical Society, and as showing the income and charges of Group Health and that its operations violated the principles of medical ethics; defendants' rules and regulation and Constitution and By-Laws, and disrupted fair competition in the community among the doctors; also as bearing on the question whether Group Health could furnish the kind of medical service that it promised on dues received from members, and further as bearing on the question whether Group Health was in fact a spontaneous plan of HOLC employees, by showing that Group Health rather was a social experiment carefully planned by the executives of HOLC in collaboration with the Twentieth Century Fund and funds associated with it, or set up and financed by it for carrying out social schemes of doubtful legality for providing medical service on what was closely akin, if not in fact, an insurance basis; and proposed to show the background of Group Health and the Twentieth Century Fund, and associated organizations; and that the Twentieth Century Fund gave $6,000 to Health Economics Association, Inc., in 1936, to be used in connection with Group Health, and in January-February, 1937, gave Group Health $22,000 for use during the next year; that a large portion of that money was used to set up GHA; beginning in August, 1938, $500 a month was paid by the Good Will Fund to Perry Taylor, administrator of Group Health, and that continued up until the time of the indictment, and that in the spring of 1938 Group Health borrowed $5,000 from the Good Will Fund or Twentieth Century Fund; that on these various questions factual issues had been presented by the testimony of Government witnesses, notably Pennipan, who made the statement that Group Health was operated successfully on dues, with the one exception of the purchase of equipment, which was made under a $40,000 grant from the HOLC, and that there were no contributions from any other organization; that he didn't know what grants were made by Good Will Fund, or who paid the salary of the administrator, Perry Taylor, from August, 1938.

Defendants then offered in evidence excerpts from the following exhibits, which had been marked and identified by the witness Percy Brown as pertaining to Group Health:

DEFENDANTS' EXHIBIT No. 31

"Twentieth Century Fund, Inc.

Report on Examination of Accounts

March 1, 1936, to February 28, 1937

Detail of Disbursements—Fund Projects

March 1, 1936, to February 28, 1937

	Medical Economics Department
Health Economics Association	$6,010.67"

DEFENDANTS' EXHIBIT No. 32

"Twentieth Century Fund, Inc.

Report on Examination of Accounts

March 1, 1937, to February 28, 1938

Contributions to Outside Organizations

March 1, 1937 to February 28, 1938

	Appropriated	Disbursed	Surplus Unexpended
Health Economics Association, Inc.	$16,642.14	$16,642.14	....."

DEFENDANTS' EXHIBIT No. 33

"Good Will Fund, Inc.

Report of Examination of Accounts

December 29, 1936 to December 31, 1938

Notes Receivable—$18,000.00

These notes were examined at the office of the Fund, and were as follows:

Dated	Name	Due	Amount
Sept. 16, 1938	Group Health Association, Inc.	March 16, 1939	$5,000.00

Appropriations and Grants

December 29, 1936 to December 31, 1938

	Appropriated	Disbursed	Surplus Unexpended
Preventive Group Medicine	$8,000.00	$2,577.47	$5,422.53

Defendants' Exhibit No. 34

"Good Will Fund, Inc.

Report on Examination of Accounts

January 1, 1939 to December 31, 1939

Appropriations and Grants

January 1, 1939 to December 31, 1939

	Unexpended Jan. 1, '39	Disbursed	Credited to Appropriations
Research Assistant—Group Health Perry Taylor	$5,422.52	$3,621.30	$1,801.23

Defendants' Exhibit No. 36

"Joint Committee, Twentieth Century Fund and Good Will Fund Financial Report

Period, November 9, 1938 thru December 31, 1939

	Total Budgeted or Allotted	Expended to 12-31-39	Unexpended Balance
Grants Showing Balances to be Paid:			
Research Asst. Group Health	$6,500.00	$2,527.49	$3,972.51
Reserve-Loan to Group Health	2,500.00		2,500.00

Defendants' Exhibit No. 37

The Joint Committee Twentieth Century Fund and Good Will Fund Financial Report

Twelve Months ended December 31, 1940

Items of Expense		Total Budgeted or Allotted	Expended to 12-31-40	Unexpended Balance
Grants (showing Balances as of 1-1-40 or voted subsequently.):				
Research Asst. Group Hlth.—Taylor:				
Balance 1/1/40	3,972.51			
Grant to 8/1/41	7,500.00	$11,472.51	$6,654.98	$4,817.53
Group Health Assn.—Expense Scandiffio and Sibbett		350.00	328.29	21.71*
* Less: Unexpended balance closed out				120.47

DEFENDANTS' EXHIBIT No. 38

"The Twentieth Century Fund

Annual Report, 1938

(March 1, 1938 to February 28, 1939)

"Background and Aims

"The Twentieth Century Fund was founded in 1919 by the late Edward A. Filene from whose gifts the Fund's activities have since been sustained. During the first years of its existence the Fund acted solely as a disbursing agency, making annual grants to outside organizations. In the years following 1929, however, the Trustees began to experiment with surveys, conducted by the Fund itself, or economic problems of crucial current importance. An increasing proportion of the Fund's income was devoted each year to the conduct of these surveys. Finally, during the fiscal year 1937-1938, the Trustees voted to cease making grants to outside agencies and to use the Fund's entire income thereafter in its own direct activities. This action changed the Fund's status from that of a foundation making grants to outside agencies to that of an institute devoted to economic research. * * *"

* * * * * * *

"The Twentieth Century Fund

"Annual Report, 1938 [1]

"I. Changes of the Year

"* * * During the year an agreement was reached between The Twentieth Century Fund and the Good Will Fund that a sum of $75,000 left by Mr. Filene be administered as a separate account, primarily for medical economics, by two Trustees each from each Fund—Messrs. Dennison and Fahey for the Twentieth Century Fund and Messrs. David K. Niles and Robert Szold for the Good Will Fund. This Joint Committee assumed control of the fund on October 31, 1938. Percy S. Brown, Director of the Good Will Fund, has acted as the Joint Committee's Executive Officer and Evans Clark, Executive Director of the Twentieth Century Fund has collaborated with him and the Committee.

"[1] The period covered by this report is the Fund's fiscal year: March 1, 1938 through February 28, 1939."

"Table 1

"Capital Assets

"February 28, 1939

	Original Cost	Market Value
"Cash	—	$ 101.65
"Bonds, Preferred Stock, Common Stocks	$447,814.85	459,835.68

"2. Receipts

"A total of $179,390.36 was received by the Fund during the fiscal year 1938-1939. Of this $21,091.85, or 11.8 per cent, came from income on the Fund's endowment; $150,000.00, or 83.6 per cent, from dividends on the Filene Company common stock; and $8,298.51, or 4.6 per cent, from sales of the Fund's publications."

In this connection defendants offered further to prove that the Corporation owned 150,000 shares of common stock of William Filene's Sons Company *with* approximately $20 per share.

Defendants' Exhibit No. 39

"The Twentieth Century Fund

"Annual Report, 1937

"The Twentieth Century Fund was founded in 1919 and endowed by the late Edward A. Filene. During the first years of its existence the Fund acted solely as a disbursing agency, making annual grants to outside organizations. In the years following 1929, however, the Trustees began to experiment with studies, undertaken by the Fund itself, of social and economic questions of crucial current importance. An increasing proportion of the Fund's income has been devoted each year to the conduct of these studies, until finally, during the fiscal year 1937-1938, the Trustees took a step which will change the Fund's status from that of a foundation to that of an institute devoted to economic research and the formulation of economic policies.

"At the Annual Meeting of the Board in June 1937 it was voted to cease making grants to outside agencies after

the fiscal year 1937-1938, and use the Fund's entire income thereafter in its own direct activities. Final grants were made during the year to those organizations which had received aid from the Fund in previous years, except for the Credit Union National Association to which the Fund had been obligated some years ago to make a final contribution in the year 1939-1940."

. . . . . .

"Table 1

"Fund Beneficiaries

1937-1938

	Amounts of Donations	Percentage of Total Donations to Outside Agencies	Percentage of Total Disbursements
Health Economics Ass'n.	$16,642.14	39.0	10.6"

. . . . . .

"e. Group Medical Department

"With the special $5,000 appropriation from the Twentieth Century Fund the National Association employed in February 1938 Mr. James A. Dacus, until that time an outstanding man in the Federal Credit Union Section, to promote cooperative group medical service agencies among credit unions. After studying various group medical plans by personal contact (particularly the Standard Oil unit at Baton Rouge) he was sent at once to Greenbelt, Maryland, where he has since organized a medical unit. It is hoped that Mr. Dacus will develop a technique for group medical service plan organization capable of broad application through the credit union movement."

. . . . . .

"3. Health Economics Association

"The Health Economics Association was organized in 1936 to take over the work of promoting cooperative group medical service agencies which had been previously carried on by the Fund itself. The decision of the Board of Trustees of June 1937 to cease making grants to outside agencies after the fiscal year 1937-1938, however, meant the

cessation of the Fund's support of the Health Economics Association. A final grant was made to the Association for the year under review to complete the obligations which it had already undertaken.

"During the first three months of the year—before the Board's decision was made—the Association had conducted its usual promotional and advisory activities. After the decision of the Trustees, the efforts of the staff of the Association were concentrated on finishing certain projects it had on hand and terminating its active operations. Employment of staff members was discontinued, after allowing for reasonable notice.

"The most important project assisted by the Association in 1937 was the organization set up by the employees of the Federal Home Loan Bank Board to furnish, on a periodic payment basis, practically complete medical services for themselves and families. These employees formed the Group Health Association, Inc., a non-profit organization, chartered by the District of Columbia specifically for this purpose.

"This group started to furnish service on November 1, 1937, to approximately one thousand employees and their families. It now has a list of twenty-seven hundred subscribers, who, with their families, represent a membership of approximately ten thousand individuals. The Group Health Association has an income which amply meets its expenses in furnishing this service. This group has been subjected to severe attacks from the local medical association, as well as from certain District officials.

"At the time of the Fund's decision to withdraw from the field of medical economics, the Health Economics Association had started to furnish information and recommendations relating to a suitable group payment-group practice medical service plan for employees of New York City's Department of Sanitation. Employment conditions in the Department were investigated and a report with recommendations was completed and furnished to several of the officials of the City who were interested in the plan.

"Among the projects which were commenced, but which were not completed, during the year was a study of the legal status of group payment-group practice medical service in each of the several states. This was undertaken by the Legislative Drafting Bureau Fund of Columbia University at the request of the Health Economics Association

and was financed by the Association. A description pamphlet on the medical service plan of the employees of the Standard Oil Company of Louisiana was also being prepared.

"The present status of the Health Economic Association is largely one of marking time. This is being done, however, in a way which would enable it to expand its activities if financial support can be obtained from sources other than the Twentieth Century Fund."

• • • • • • •

"Table 3
"Receipts
"1937-1938

"Cash on hand—March 1, 1937	$54,383.81*

• • • • • • •

"* Includes a special fund of $17,050 given in 1933 by Mr. Filene for credit union promotion but not drawn upon. (This was subsequently paid to the Good Will Fund by order of Mr. Filene.)"

• • • • • • •

"Table 4

"Appropriations and Disbursements

"1937-1938

"Fund Projects	Appropriated	Disbursed	Surplus Unexpended
"Beneficiaries:			
"Health Economics Association	$16,642.14	$16,642.14	
"Paid to Good Will Fund (Credit Union Special Fund)		17,050.00"	

"DEFENDANTS' EXHIBIT 40

"The Twentieth Century Fund

"Annual Report, 1936

"During the first decade of its existence—from 1919 to 1929—the Twentieth Century Fund acted solely as a dis-

bursing agency, making annual grants to outside organizations. * * * While continuing to give financial support to a limited number of outside agencies, the Trustees instituted an expanding program of activities, carried on directly by the Fund itself. This program has now included studies of consumer credit, the organization of medical services, the security markets, the internal indebtedness of the United States, labor and its relation to government, taxation, wastes in distribution, large corporations and their effect on American economic life, and old-age security."

* * * * * * *

"I. Fund Activities

"* * * 1. The promotion of voluntary group payment medical service organizations; * * *"

"1. Medical Economics

"The Funds' activities in the field of medical economics were conducted by the Medical Economics Department from the beginning of the fiscal year to November 30, 1936. As in the previous year, these were under the immediate direction of Mr. R. V. Rickcord, who had begun his full-time connection with the Fund on November 1, 1935.

"The Fund's medical economics activities were transferred, on December 1, 1936, to a new, independent agency, organized as a non-profit membership corporation, and called the Health Economics Association. Mr. Rickcord was elected Executive Vice-President of the new Association. The government of the Association was placed in the hands of the following Board of Trustees:

"Prentiss L. Coonley, President,
"R. V. Rickcord, Executive Vice-President,
"Evans Clark, Treasurer,
"J. Frederick Dewhurst, Secretary,
"Walter Biddle Saul,
"M. D. Vincent.

"As a result of the activities of the Fund, and of the Health Economics Association, substantial progress has been made in the promotion of voluntary cooperative, group payment medical service organizations. At the end of the fiscal year twelve agencies of this kind had actually been

organized, consisting mostly of small groups. A total of nine other organizations were definitely committed to such plans, of which one is actively engaged in establishing a plan and the others are in various stages of negotiations with organization officials and employees. Chief among these groups is the employees in the District of Columbia of the Home Owners Loan Corporation. Some seventeen other organizations have approved a group payment plan, but have not begun to put it into operation.

"In the prosecution of these promotional activities Mr. Rickcord and his associates discovered that the insurance and corporation laws of several states made it illegal or impracticable to set up genuine cooperative group payment agencies—except on a very limited scale. It became evident that a thorough knowledge of the legal situation was an essential prerequisite to effective action by those interested in group payment in every state. The Columbia University Legislative Drafting Bureau was retained by the Association to make a thorough study of the laws and judicial decisions of each state bearing upon this subject. This study will be completed before the end of 1937 and the sections on each state will be made available to interested groups as they are finished. The Association itself, however, will take no part in efforts to remove these legal barriers." • • • • •

"II. Activities of Beneficiaries

"Seven outside agencies were beneficiaries of grants made by the Fund during the fiscal year 1936-7. The name of each with the amount of each grant and its percentage of the total donations to outside organizations, and its percentage of the total disbursements of the Fund, is given in the following table:

"Table 1.

"Fund Beneficiaries, 1936-7

	Amount of Donations	Percentage of Total Donations to outside Agencies	Percentage of Total Disbursements
"Heath Economics Association	$6,010.67	14.0	3.7"

"2. Health Economics Association ($6,010.67)

"The organization of the Health Economics Association, Inc., was authorized by the Board of Trustees at the meeting which was held on June 4, 1936. The Association on December 1, 1936, took over the Fund's activities in the field of medical economics. The work of the Association has been described, with that of the Medical Economics Department, on pages 10-12."

• • • • • • •

"3. Appropriations and Disbursements

"The last annual meeting of the Board of Trustees was held on June 4, 1936. Under authority of the resolutions of the Board passed at this meeting, and subsequent action by the Executive Committee, appropriations were made during the fiscal year 1936-7 which totaled $184,513.34. The amount disbursed from these appropriations was $161,106.28, leaving an unexpended operating surplus of $23,407.06. • • •"

"Table 4
Appropriations and Disbursements
1936-1937

	Appropriated	Disbursed
"Medical Economics (Including Health Economics Ass'n.)	$30,000.00	$30,000.00"

• • • • • • •

"Table 5
"Analysis of Disbursements
1936-1937

"Organization of Project	Amount	Per cent of Total	Field of Activity	Type of Activity
• •	•	•	•	• •
"Medical Economics....	$30,000.00	26.9	Economics	Social Action"

"IV. Fund Office Organization

"1. Officers and Staff Personnel.

"The business of the Fund during the fiscal year 1936-7 was carried on in the same offices which were occupied dur-

ing the previous year at 330 West 42nd Street, New York City.

"The members of the staff during the fiscal year 1936-7 were as follows:

Table 9

"Staff Personnel

"Regular Staff:

"Director for Medical Economics	R. V. Rickcord (To December 1, 1936)
"Field Workers for Medical Economics	Charles A. McKeand (To December 1, 1936)
	John H. Quill (To December 1, 1936)

DEFENDANTS' EXHIBIT 41

"Twentieth Century Fund, Inc.

"Annual Report, 1935

"I. Fund Activities

"In addition to these activities considerable progress was made along the lines of the Fund's program in the field of medical economics, and a third report on American foundations was compiled and made public.

"A brief summary of each of the projects carried on by the Fund during the fiscal year follows:

I. Department of Medical Economics.

"The largest proposition of the Fund's resources was disbursed in the furtherance of the work of this Department. The chief activities of the staff, directed by Dr. Nathan Sinai during the previous year and up to October 1, 1935, were centered on giving advice and counsel to private and public agencies interested in the organization of group-payment plans for medical services.

"After a careful study of the activities of the Department during the first two years of its existence, however, the Trustees came to the conclusion that its main objective should be actively to promote the organization of group-

payment agencies—i.e., organizations through which groups of people might obtain all-around medical and hospital care in return for small, fixed periodic payments. The Trustees, therefore, at the Annual Meeting of May 1935 approved a program directed toward this end. Mr. R. V. Rickcord was added to the Fund Staff in August to promote such group-payment experiments. In October he was appointed Director of Medical Economics when Dr. Sinai resigned his position to return to the University of Michigan as Professor of Public Health. Dr. Sinai, however, agreed that when needed he would act as consultant to the Fund in advising it and interested groups on the details of setting up group-payment plans.

"During the remainder of the period under review Mr. Rickcord and his assistants have carried on an aggressive campaign to start groups in several localities. The Department has attempted to interest such national organizations as the Chamber of Commerce of the United States, the American Federation of Labor, the National Manufacturers' Association and local Chambers of Commerce in this program. An intensive drive has been made in the city of Philadelphia to start groups, both through the initiative of employers and of labor unions. As a result of this work one of the largest unions in Philadelphia is engaged in organizing a plan, and five large companies there and in other localities are doing likewise.

"The year's experience indicates that group-payment agencies meet a wide and imperative need, and that they can be organized in all parts of the country in direct proportion to the amount of funds and personnel available. As in the case of the credit union movement, however, one of the first requirements is legislation in the several states which will authorize, and provide for the regulation of, group-payment plans in the interest of the general public. . . ."

"Table 7

"Analysis of Disbursements

1935-1936

"Organization of Project	Amount	% of Total	Field of Activity	Type of Activity
"Medical Economics . . .	$28,001.21	19.1	Economics	Research and Education"

"IV. Fund Office Organization

"The business of the Fund during the fiscal year 1935-6 was carried on, as in the latter part of the previous year, at 330 West 42nd Street, New York City.

"The members of the staff during the fiscal year 1935-6 were as follows:

"Regular Staff: • • •

"Director for Medical Economics Nathan Sinai
(To October 1, 1935)
R. V. Rickcord
(From November 1, 1935)

"Assistant for Medical Economics Miriam Steep
(To September 1, 1935)
R. V. Rickcord
(August 1, 1935 to November 1, 1935)

"Field Workers for Medical Economics John H. Quill
(From September 18, 1935)
Charles A. McKeand
(From November 20, 1935)"

• • • • • • •

"V. Fund Publications

"1930. 2. A Cure for Doctors' Bills, by Evans Clark, Director of the Twentieth Century Fund. 11 pages. (Out of print)

"Reprint of an article that appeared in the Atlantic Monthly of October, 1930, suggesting the advantages of guilds of doctors offering complete medical service and periodic health examinations at a fixed annual fee. • • •

"15. How to Budget Health, by Evans Clark. Published by Harper and Brothers and now to be had from the Twentieth Century Fund only. Cloth. 328 pages. $4.00.

"A study, written with the advice and counsel of eminent physicians and laymen, which offers a concrete plan by which medical costs can be budgeted every year in advance through groups of family doctors and associated specialists, with hospital facilities, offering complete medical and hospital care on the basis of small, fixed, periodic payments."

The Government objected to this offer on the ground that all of these matters were incompetent, irrelevant, and im-

material, and merely operated to becloud the fundamental issues in the case.

The Court: My statement is that I have reached my conclusion and do not consider the evidence admissible; therefore, I sustain the Government's objection to that line of evidence. I might briefly state my reasons, which are twofold.

First, I do not regard the financial and economic affairs of GHA as material to the issues of the case; secondly, as to its bearing upon the question of the Medical Society's approving GHA there is nothing to show that at the time of any action by the Medical Society, or any of its committee or representatives, they knew of any subsidy or financial assistance being given by these organizations. Hence, it could not in any wise enter into their considerations.

So far as the evidence now shows, there is nothing to indicate that the defendants knew anything of these alleged subsidies up until the time that the evidence was produced here.

Mr. Richardson: I feel I should say part of our offer is to prove knowledge.

The Court: Where would it go back to?

Mr. Richardson: In the first place, the evidence in the record as it stands now is replete with statements from the very start that this thing was financed by the Twentieth Century Fund.

The Court: The evidence shows that there was no financial assistance given to them until August, 1938.

Mr. Lewin: That is right.

The Court: How do you reconcile that? You don't claim that they gave them any financial assistance, do you—any of these organizations?

Mr. Richardson: Oh, yes, because we have the evidence of Mr. Rickcord, who was the man who actually set it up. They paid his full salary from December 1, 1936. He was instrumental in setting it up. They paid his office rent, paid his clerks. They paid his rent for the administrative offices of G.H.A.

The Court: I may not have a correct understanding of that. I do recall that there was testimony of one of the doctors in the early stages of the matter that indicated that Mr. Rickcord had something to do with it.

Mr. Lewin: I think it is in evidence that he talked to Mr. Rickcord generally about the plan.

The Court: I will put my decision upon a broad basis, and that is the first ground.

The second ground is put in as secondary, and I thought I was correct in my understanding of it.

I do recall that there is something in the evidence—I think it came out in the Government's evidence, perhaps, showing losses—indicating what may be termed a suspicion that the Filene Fund was back of it; but when you take your offer of evidence now, which indicates that no actual financial assistance was given, no actual support to the organization itself, after it got started was given until August, 1938. I do not see how that could bear upon anything that was done by the defendants previous to that time.

Objection sustained and exception allowed.

Dr. Olin West, a defendant and a witness for the defendants.

Direct examination.

By Mr. Leahy:

I am a doctor. I have resided in Chicago since 1922. I was born in Alabama in 1874; was educated in public and private schools in Alabama and at Howard College, and later at Vanderbilt University, where I graduated in 1895, and received a degree of Doctor of Medicine in 1898. I taught chemistry at Vanderbilt, was in charge of the chemical laboratory, taught physics, was afterwards an assistant to the chair of chemistry, associate professor of chemistry and associate professor of materia medica and therapeutics; and an assistant to the chair of physiology. I practiced medicine from 1898 until 1910 at Nashville, Tennessee, serving also as secretary to the Tennessee State Medical Society; became director of public health for the State of Tennessee for the Rockefeller Sanitary Commission; later as state health officer and secretary of the State of Tennessee Board of Health. I became field secretary of the AMA in April, 1922; later I became secretary of the Bureau of Health and Public Instruction, and I am now secretary and

general manager of the AMA. With reference to national defense at present I am secretary of the Committee on Medical Preparedness of the AMA. I am secretary of the Judicial Council, and secretary of the Council on Scientific Assembly of the AMA, although I have no vote on either council. The AMA is a federacy of constituent state and territorial associations. There are one or two states in which there are no county societies, but district societies. The House of Delegates of the AMA is the policy-making and legislative organization, and is composed of delegates from constituent state and territorial associations. Each scientific section of the general assembly has one delegate, and medical corps of the United States Army has a delegate, the medical corps of the United States Navy has a delegate, and the United States Public Health Service has a delegate. The House meets annually or when special sessions are called. The House is the body which formulates the policies of the AMA, and during the interim between meetings of the House the Board of Trustees is authorized to act for the House. The Board of Trustees has nine members, elected by the House of Delegates. The Executive Committee, consisting of three members of the Board of Trustees, meets once a month, except during the summer. The Board of Trustees has its own secretary. As secretary I report to the House of Delegates and keep minutes of the House of Delegates and perform such other duties as are stipulated in the by-laws. As general manager I am the representative of the Board to administer the affairs of the Association and its officers, with the cooperation of the official staff of the AMA. The AMA was formed in 1847 to promote the art and science of medicine, and to better the public health, and they are its only objects, and have been pursued ever since the constitution was written. The Association publishes a Journal and nine other scientific journals devoted to special fields, and are now publishing a journal devoted to military medicine, that is, the medicine of war. It publishes a quarterly cumulative index medicus, an index of the medical literature of the world, the only publication of its kind in existence, and through these publications there has been formed a medium for the discussion of scientific opinion not only in this country, but the world, thereby promoting the art and the science of medicine. It publishes a magazine for the general public called Hygeia, and has distributed millions of leaflets and

pamphlets designed to instruct the public in the prevention of diseases, and on the subject of health. The publications are scientific publications with editorials pertaining to scientific matters. Abstracts from other publications about scientific medicine are published, as well as a section devoted to medical organization. Queries and answers are also published. In Hygeia an effort is made simply to disseminate information helpful to the public. Two bureaus of the Association answer from ten to twenty thousand letters a year, one, the Bureau of Health Education; the other, the Bureau of Investigation, though the latter is concerned largely with fighting frauds and quackery in medicine.

My first knowledge of Group Health came when I learned of the charter, but I was informed that a plan was under consideration possibly in April or May of 1937, though I have no documentary evidence to that effect. In May or June I came to Washington to discuss the matter of Group Health with members of the Medical Society. Of the doctors present, I had met Dr. Hooe, Dr. Ruffin, Dr. McGovern, Dr. Macatee, and Dr. Reede, but on that occasion I was in Washington on official business of an entirely different nature and was accompanied by no other person from the AMA. At the time I offered a suggestion that the Medical Society might consider a plan for providing medical service to members of the low-income group, as the Society had not only contemplated such a plan but had given one long consideration and had begun organizing it.

A prepayment plan for medical service of some group in Washington was discussed at the AMA meeting in Atlantic City in June, 1937, where Dr. Woodward made a statement, but I don't recall any instructions being formulated by the Board of Trustees with reference to anything that the AMA should do in the premises. In June, at the meeting of the House of Delegates, I received some information in letters from various persons concerning Group Health. Later in September the Board of Trustees instructed Dr. Fishbein and me to develop the facts on Group Health and publish them. We developed what information we could and Dr. Woodward, who was instrumental in getting a considerable part of that information, was asked to prepare a statement for publication in the Journal. My recollection is that such a statement was published in the October 2, 1937, issue of the Journal, though I didn't personally participate in

the preparation of the article, except that I made a suggestion as to one or two sentences, perhaps paragraphs. In seeking information about Group Health I made inquiries in Washington and visited certain persons in official positions in an effort to secure facts to present to the medical profession and to the public. I conferred with Dr. Conklin, Senator Copeland, another Senator, and tried to secure a copy of the contract between Group Health and those who purchased its services, as I thought it was highly important to know what Group Health promised to deliver under such a contract; whether the plan was sound and whether it was to render medical service as an incorporation, which we believed to be an illegal thing; and whether it would have an adequate staff to provide good medical service in quantities indicated in its contract. I was unable to secure that information through any available source.

I was present at the November 6 meeting in Chicago, attended by Drs. McGovern, Hooe, Leland and Woodward, and an abstract of that conference read in evidence (Gov. Ex. 117) was prepared by a stenographer in my office, but it is not a verbatim report. I only recall attending one meeting of the District Medical Society and that was many years ago, and it had nothing whatsoever to do with Group Health. I did not attend any meeting of the District Medical Society pertaining to Group Health. I visited the offices of the Medical Society on possibly three occasions, but not specifically for the purpose of discussing Group Health, though it quite possibly was discussed. I never discussed Group Health with Dr. Cutter until considerably after the time of its organization and the beginning of its plan. I don't recall that I ever discussed the matter with Dr. Leland until after the Atlantic City session at which the matter was discussed and that discussion with Dr. Leland was purely incidental. After Group Health began its operations I had some discussion with Dr. Leland and many other persons, as the newspapers were full of it, and as I had been instructed to develop the facts, and publish them. I don't recall any conference that I ever had with Dr. Cutter, about the matter. I knew nothing of the minutes of the Medical Society meeting until they were read during this trial, though I may have seen some extracts from the minutes if they were sent to my office.

When mail comes into the AMA offices in Chicago, except that marked "Personal," it is sent to a central distribution

point, and where letters are delivered in one department that probably should have been called to the attention of another department, a copy might be sent there.

Gov. Ex. 144 is a letter dated October 19, 1932, which I wrote as secretary of the Judicial Council and at the instruction of it, to Dr. R. W. Baird, Dallas, Texas.

Defense counsel read Gov. Ex. 144 to the jury as follows:

"I have been instructed to send you a copy of the decision of the judicial council of the American Medical Association in the appeal of Dr. R. W. Baird, et al. from the decision of the Board of Councilors of the State Medical Association of Texas, this appeal having been heard by the judicial council in Chicago on September 21, 1932. This decision is as follows:"

This letter (Gov. Ex. 144) was sent on the instruction of the Judicial Council issued to me as secretary of the council. I had no knowledge of the facts which entered into the decision of the council, other than what I heard at the discussions at the time the Judicial Council gave its official consideration to this appeal.

I did not take part in the deliberations of the Judicial Council in 1932. I had nothing whatever to do except serve as secretary and perform the functions of that office. I had no vote.

Defense counsel continued reading Gov. Ex. 144 as follows:

"Decision by the Judicial Council.

"The fundamental issue in dispute in this case is the ethical character of certain contracts held by the appellants to give medical service to groups of people on a monthly per capita plan of payment. No essential facts of the contracts were in dispute.

"It is contended by the appellants that these contracts are not in violation of all or any of five conditions which the Judicial Council has declared at various times are conditions, which obtaining, make a contract unethical. The Dallas County Medical Society which sentenced these appellants to suspension contended that these contracts violated all five of these conditions. When, in its constitutional function as authority over ethical matters, the Judicial

Council expounds the subject of contract practice and lays down certain principles which when present create an unethical contract it is not to be assumed that those are the only principles which may have that effect. A fundamental of medical ethics is that anything which in effect is opposed to the ultimate good of the people at large is against sound public policy and therefore unethical. On the five points mentioned the appellants presented a strong argument which might be convincing if a narrow or local view only is considered. Nevertheless the Judicial Council is of the unanimous opinion that this type of contract is unethical on the basis of being contrary to sound public policy.

"The appellants were at the same time convicted of violation of a by-law of the society forbidding the holding of certain contracts and pleaded error in the trial on a technical procedure. This phase of the appeal was not pressed by either side but from such records as were submitted to the Council it is of the opinion that no reversible error was proven."

I wrote Gov. Ex. 138.

Defense Counsel read Gov. Ex. 138 to the jury as follows:

"January 31, 1935.

DEAR DR. MCLEAN:

I regret exceedingly that because of the tremendous press of work, a massive correspondence and unusual demands on my time, I have found it utterly impossible to make prompt replies to many letters that have come to me within the last six weeks. Among those that have unavoidably accumulated on my desk is your letter of January 10."

By Mr. Leahy:

Q. Doctor, what occasion had you for writing this letter other than the letter written to you by Dr. McLean?

A. None, sir.

Mr. Leahy: "The Ross-Loos Clinic in Los Angeles was established some years ago and operated in the usual manner as a clinic quite similar to numerous other groups of physicians in various parts of the country. A year or two ago, more or less, this clinic group entered in agreements with the employees of certain organizations, or with the organizations themselves, whereby the clinic agreed to pro-

vide necessary medical service for stipulated sums, the idea being, as I understand it, that each employee concerned should pay a certain amount each month into a common fund and that the clinic should be paid on the basis of the number of employees concerned in the various groups. Among the groups that entered into this arrangement, as I am informed, was the group composed of firemen employed by the City of Los Angeles.

"It is claimed by the Ross-Loos Clinic and, according to my information, by the members of the groups who have arranged to secure medical service through that clinic that the plan has been mutually satisfactory. The Los Angeles County Medical Association, however, appears to have considered the scheme to be unethical. Doctors Ross and Loos were cited to appear before the proper official body of the Los Angeles County Medical Association and were dropped from membership in that organization after a hearing of the charges preferred against them. Doctors Ross and Loos appealed from the decision of the Los Angeles County Medical Association to the Council of the California Medical Association, and that Council upheld the decision of the county society. I understand that Doctors Ross and Loos intend to appeal to the Judicial Council of the American Medical Association, but up to this time no appeal has been filed.

"I can offer you nothing more than my personal opinion concerning contracts of the kind which seem to have been made between the Ross-Loos Clinic and various groups. That opinion is to the effect that all such arrangements are potentially dangerous to medicine and are not in the public interests. I am quite sure that some of the professional groups that have entered into such contracts are thoroughly capable and that they have no doubt given good service under these contracts. In my opinion, the weaknesses and dangers of contract practice are, however, inherent in all of these plans. When one such group of physicians appears to have succeeded financially in an undertaking of this kind, their success will almost surely stimulate the development of similar schemes under the direction and control of less competent and less responsible persons with the result that a vicious circle of underbidding will be established, and inevitable deterioration in the quality of medical service will result.

"I am asking our Bureau of Medical Economics to send you some printed material having a bearing on this general subject."

This exhibit merely reflects such facts and information as I had. The appeal mentioned did come to the Judicial Council and the decision of the California Medical Association was reversed in accordance with or on the groups of errors in procedure, and failure to be guided by the organization's law of the Los Angeles Medical Society, and the California State Medical Association, one or both. The constitution and by-laws of the AMA specifically stipulate that the jurisdiction of the Judicial Council in such appeals shall be only with respect to questions of law and procedure; that is, organization law and procedure. Following this reversal the Ross-Loos case has never come to the Judicial Council again, and Drs. Ross and Loos are still members of the AMA. When I expressed my personal opinion in the letter of the contracts of the kind made by Ross-Loos Clinic and various other groups, I referred to my belief that many of the schemes of this particular class are potentially dangerous. That belief was founded upon large observation and experience, not only of my own, but on the experience of the medical profession. Group practice has several definitions. My own conception of it is that of a practice carried on by a group of physicians acting on their own responsibilities, and not responsible to anyone else, who are combined together for the purpose of furnishing as complete as possible medical service to members. In regard to group practice, both consumer and producer groups, the House of Delegates of the American Medical Association in Cleveland, in 1934, adopted a set of principles that were intended to serve for the guidance of prepayment group plans for the provision of medical care to certain income groups. The AMA has not been opposed, as a general policy, to all group plans, whether prepayment or otherwise, in the United States, and has declared no policy against the group practice of medicine, as such. The type of character of group practice which the AMA has opposed is any group practice which offers to do more than it is believed can be done under the terms on which its service is to be delivered. It has opposed group practice that is controlled by corporations, because it believes that a corporation cannot be engaged in the practice of medicine and cannot qualify to

engage in the practice of medicine. It has also opposed group practice where conducted by men known to be disreputable and irresponsible, and who have established a record for irresponsibility and for lack of professional qualifications and ethics. Where a group is practicing, and qualified to do so, and renders complete medical care in accordance with its contract, the AMA has no attitude to it other than to offer principles for the guidance of its work, and today many members of the AMA are engaged in the group practice of medicine of all types and have been over a period of years. When I made the statement in my letter of January 31, 1935:

"When one such group of physicians appears to have succeeded financially in an undertaking of this kind, their success will almost surely stimulate the development of similar schemes under the direction and control of less competent and less responsible persons with the result that a vicious circle of underbidding will be established."

I had in mind that a great number of contracts and group plans of all kinds had developed, some of which offered far more than they could deliver, and some of which had no intention of doing what they had agreed to do; in several instances where an organization of this kind was developed by responsible groups, irresponsible groups developed the same kind of program, offering far more for far less, when it was known it would be impossible for it to give good medical service. In other instances, a group is opposed when it delivers poor services, apt to be as harmful as helpful. The character of opposition that the AMA takes to such groups is none other than to attempt to develop the facts and make them known through publication in the associations' own publications and in reply to letters received. The AMA institutes no other methods of opposition that I know of.

Gov. Ex. 141 is a letter which I wrote to Dr. Frieburg, Cincinnati, Ohio, on February 6, 1936.

Defense counsel read Gov. Ex. 141 to the jury as follows:

Q. Doctor, the very opening sentence of your letter as shown by the carbon copy under date of February 6, 1936, is (reading):

"Your letter of February 4 has just come to hand."

What other occasion had you for writing than the fact that you had just received a letter when you wrote No. 141, the carbon of which you hold in your hand?

A. I presume you want me to refer to any circumstances that may have occurred before I received this letter?

Q. What occasioned the writing of this letter?

A. I received a letter from Dr. Frieburg to whom my letter is addressed.

Q. Doctor, in this letter you state as follows (reading):

"I am sorry indeed to know that anybody in Cincinnati is preparing to begin operations of a plan made more or less famous, or infamous, according to the point of view, by Doctors Ross and Loos in Los Angeles. I am quite convinced that the Ross-Loos scheme is a violation of the principles laid down by the courts of California which have repeatedly insisted that the corporate practice of medicine is illegal in that state. I am just as strongly convinced that it is relatively easy to evade the law. What is in effect a corporation may be organized under the designation of partnership. I believe that schemes of the Ross-Loos type will inevitably tend to the creation of a demand for the solicitation of medical practice, and I am quite convinced that the operation of such schemes will inevitably cut the ground from under the feet of the private practitioner."

When you stated that "schemes of the Ross-Loos type will inevitably tend to the creation of a demand for the solicitation of medical practice,' to what did you refer?

A. I referred to the fact that, as I stated a few minutes ago, the operation of such plans very frequently leads to the development of other plans by less responsible persons, in many instances, who do not hesitate to resort to any method that may be available to them for securing practice.

Q. When you said "solicitation" what did you refer to by that?

A. I meant asking patients to come to an individual or to a clinic or anything else, whether it be an institution or an individual.

Q. Is the American Medical Association opposed to the solicitation of patients?

A. The principles of medical ethics of the American Medical Association, which have been adopted independently by the constituent territorial associations, with perhaps one association that has adopted it in a way, but which has its

own code of ethics also, distinctly declare that the solicitation of patients is an unprofessional procedure.

Q. What is the basis of the principle of ethics that solicitation is an unethical procedure?

A. Just a common sense basis, that a man who goes out and begs patients to come to him and offers them some attraction to come to him is guilty of an unethical practice. He has nothing to sell other than his own qualifications and knowledge and ability as a practitioner; and it certainly is not the part of an ethical physician to glorify himself to patients and to solicit patronage.

* * * * * * * *

Q. Were you speaking from personal knowledge, or otherwise, Doctor, when you made that statement in the letter to which I have just drawn your attention?

A. I was speaking entirely from the results of my own personal observation.

Q. You wrote in that same letter (reading):

"I am informed that Doctors Ross and Loos are thoroughly competent physicians and that they have associated with them young men who are well qualified. I have heard from various sources that the Ross-Loos clinic actually delivers good medical service. These two facts, of course, operate very strongly against any movement designed to put a stop to the utilization of mass production methods in the practice of medicine and to preserve the individual private practitioner as the most important entity in the field of medicine. It would take a great deal of argument to convince me that any scheme to use mass production methods will operate to the advantage of scientific medicine or in the interest of sound public policy."

Doctor, to what did you refer when you stated that mass production methods in the practice of medicine were not in accordance with what you believed to be good, sound public policy?

A. Of course I meant exactly what I said, that I did not believe it is possible to practice medicine on a mass production basis and do justice to the patient or to deliver the best quality of medical service under any such conditions.

Q. Why is that, Doctor?

A. Simply because one individual patient may require three hours for proper attention and another may require

ten minutes; and what is good for one patient may not be good for another who has exactly the same diseased condition. They have got to be handled separately and examined separately, and all the factors that enter into the diagnosis and treatment have got to be individually considered.

Q. When you stated to Dr. Frieburg that you had information that Doctors Ross and Loos were both able and qualified men and that they had about them a staff of qualified physicians, were you giving the correct information that you had at hand at the time?

A. Yes, and I should like to say, if I may be permitted to do so, that this letter was written in 1936, and that in a letter, or maybe one or two letters, that I had previously written I had not made the same statements, for the reason that I did not then have that information.

Q. In other words, the information which you gave to Dr. Frieburg in 1936 was based upon information which had come to you in between the time of previous correspondence and this?

A. It had come later. I had written some of the other letters in which I did not make a similar statement. I tried to be perfectly fair to those men. I had lines from men who knew the quality of their practice, and I had conferred with Dr. Loos himself, and I did not hesitate to make the statement that is made in that letter, that I had information that they were competent physicians. I believe I stated in one place that they had surrounded themselves with a staff of competent physicians. I certainly had no idea of doing them any injustice, and I tried to do them full justice.

Q. (Reading further):

"I am rather inclined to the opinion that each separate county medical society will have to deal with the questions involved and the matters referred to in your letter on the basis of conditions that actually exist in its own community, and I am sorry that I cannot offer you any very helpful suggestion.

"With my sincere good wishes, I am

"Very truly yours,"

What did you refer to, Doctor, when you make the statement in the letter that "each separate county medical society will have to deal with the questions involved on the basis of conditions that actually exist in its own community"?

Mr. Lewin: Is there any ambiguity about that?

Mr. Leahy: Yes. It is very important.

Mr. Lewin: I object to it.

The Court: I think you may ask him to state his reasons for that statement.

By Mr. Leahy:

Q. Will you state the reasons for that statement? Oh, in other words, Doctor, what is there about the practice of medicine as it refers to group practice that is different in one community from conditions existing in another community?

A. Mr. Leahy, the American Medical Association—I hope I will not take too much time in making this statement.

Q. Make it as briefly as possible.

A. The American Medical Association has been rather severely criticized for not having produced a plan of private medical service for the members of low-income groups in all the United States. The American Medical Association has made a very determined, persistent, and honest effort to develop such a plan, but it becomes perfectly apparent on a study of the situation that it cannot be done. A plan that would serve satisfactorily in an industrial state, like New Jersey or Pennsylvania, could not possibly be applied successfully in an agricultural state like Mississippi. As a matter of fact, no single plan can be prepared or operated by anybody that will work with equal success in all parts of an individual large state; and we have become thoroughly convinced of that after careful and conscientious consideration of the factors involved. Moreover, the American Medical Association believes that it is the right and the duty of the component county medical societies to take the leadership and deal with affairs within their own jurisdictions; and the American Medical Association has no intention or desire to dictate to a component county society or state medical association what it shall do or shall not do. Its only purpose is to be helpful, simply to carry out the purposes declared in its constitution, to promote the art and science of medicine and the betterment of the public health. That can be done by the extension of medical service and by the protection of the quality of medical service; and that is all it can do.

Gov. Ex. 166 is a letter which I wrote to Dr. J. N. Baker, Montgomery, Alabama on February 29, 1936.

Defense counsel read Gov. Ex. 166 to the jury as follows:

"I am greatly obliged to you for your kindness in sending me a copy of a communication dated February 25, addressed to the presidents of certain county medical societies in Alabama and to the chairman and members of the Committee on Public Relations of the Medical Society"—I guess that is "Association" written over—"of the State of Alabama.

"I am glad indeed to know that the Tennessee Valley Authority is in no way officially concerned with the problem of medical care. I sincerely hope that the county medical societies in the counties directly interested will give most careful and exhaustive consideration to any plans that may be proposed for providing medical service on a group basis. Confidentially I may say to you that the more I hear and think about many of the experimental plans now in operation the more concerned I become. I cannot but feel that there are grave dangers inherent in practically all of them and that they tend toward the development of a sentiment for state control of medical practice. I wonder if any of them have a sound actuarial basis. I wonder if it is wise to teach people that it is possible to render really good medical or really good hospital service for a nominal sum. Personally I do not believe that it is possible, whether it be done on a group basis or otherwise. I am very much afraid that a tendency has already developed to raise the ante, so to speak, in many of these experimental plans, either by increasing the incomes of the members of which are large enough to enable them to pay for needed medical service, or by increasing the membership fee. Moreover, I am fearful that the group hospital plans which are rapidly developing and which in many places are being tied up with other plans for providing medical service, may result in putting the hospitals directly into the practice of medicine. There is no doubt in my mind that this very development is now in progress, and I am almost willing to predict that it will not be very long in some places before the professional members of hospital staffs will find themselves dictated to by lay boards and lay administrators as to what they shall do and what they shall not do.

"Please understand that this letter is in the nature of a purely personal chat. I do not of course wish to discourage the efforts of any medical society that has given full consideration to the problems that have arisen within its own jurisdiction and that has become convinced that some sort of experimental plan is necessary."

When you wrote that last paragraph, Doctor——

"I do not of course wish to discourage the efforts of any medical society that has given full consideration to the problems that have arisen within its own jurisdiction"——

were you then referring to the statement which you gave us a moment ago that each local medical association should determine the problems within its own jurisdiction?

A. Yes; I was referring to that. I was also referring to the fact that the House of Delegates of the American Medical Association had encouraged societies that, after careful investigation of the facts on the basis of their best judgment, believed that it was necessary to develop some sort of unusual plan to provide service for the members of low-income groups and should undertake it on an experimental basis; and a number of societies in various parts of the country had initiated such plans after they had studied conditions within their own jurisdictions.

Q. Were they group plans?

A. They were plans that were organized by the medical societies themselves, and every member of which, that was willing to participate in it, was available for any person that desired his services.

Q. Were they on a prepayment basis?

A. I think most of them were. Some of them, according to my recollection, were not.

It is not only my custom, but my duty as secretary and manager of the AMA to attend each and every convention of the AMA. I recall a resolution or action taken by the House of Delegates with reference to hospitals practicing medicine, wherein it was suggested that there be cooperation between the Judicial Council and Dr. Cutter's bureau with reference to certain evils existing.

I wrote Gov. Ex. 143 in reply to Gov. Ex. 142.

Defense counsel read Gov. Exs. 142 and 143 to the jury as follows:

Gov. Ex. 142 is dated March 14, 1936, directed to Dr. West, the American Medical Association, Dearborn Street, Chicago, and reads as follows (reading):

"This is merely a personal note to you for your information and use as you may think best. It may be known to you that Dr. George H. Cooke has been and is trying to organize a group clinic in Cincinnati on the identical plan of the Ross-Loos clinic in Los Angeles. Dr. Cooke is a member of the Butler County Medical Society but not of the Cincinnati-Hamilton County Academy of Medicine. Cooke addressed the Council of the Academy asking what would be its attitude towards members joining his group. The Council referred this to the committee on the Costs of Medical Care of which I am chairman. This committee advised the Council that no reply to such a question was coming to anyone not a member. Upon advice of the committee the Council submitted the matter with full information regarding all of the circumstances to the Academy as the special order of business of March 10. They submitted three questions to which they requested specific replies. In substance these were (1) Does practice under such a prepayment group plan constitute a violation of Article 6, Section 2, of the Principles of Medical Ethics? (2) Should membership in the Academy be withheld from practitioners who are practicing in such violation? (3) Shall practice by members of the Academy in such violation be considered sufficient ground for the termination of membership?

"The meeting was well attended and the vote was in the affirmative, with only four dissenting. There was ample discussion with but one speaking for the negative. The meeting was not executive purposely. There was some adverse newspaper comment with the usual misunderstanding of the real issue.

"It is the object of this letter to furnish you with this information to invite your frank comment and to suggest that if you wish full information you write to the secretary of the Academy requesting it.

"With very kind personal regards, I am"——

To which Dr. West replied on March 18, 1936, Gov. Ex. 143 (reading):

"My dear Doctor Frieburg:

"I am greatly obliged to you for your personal letter of March 14. I am glad indeed to have the information sub-

mitted. I sincerely hope, of course, that the Cincinnati Academy of Medicine will be able to head off the establishment of all sorts of group schemes of the nature referred to in your letter, because I am quite convinced that these schemes do not operate to the advantage of medicine or the medical profession or of the public. I do believe that they are opposed to public policy. While I have frequently heard that the clinic mentioned in the first paragraph of your letter, which has been operating in Los Angeles for some time, has heretofore been rendering good medical service, I have heard it intimated within the last week that the quality of the service rendered by that concern is gradually deteriorating. As far as I am personally concerned, I am quite convinced that this is an inevitable result of the operation of such schemes.

"If I secure any further information from authentic sources I shall pass it on to you.

"With most cordial good wishes I am

"Very truly yours,"

When I wrote that "I have heard it intimated within the last week that the quality of the service rendered by that concern is gradually deteriorating" I was truthfully and correctly expressing information which I had at that time. It was within a week of the time of this letter that I heard that the quality of medical care of the Ross-Loos Clinic was deteriorating. But I will, in order to be perfectly fair to everybody concerned, be glad to state openly here that I later heard from quite as reliable sources that the Ross-Loos Clinic was continuing to render good medical service. I have no intention or desire to be unjust to anybody and I do not want to do anybody any harm, and I would be glad to make amends for any statement, even though I considered it to be reliable and authentic, that was later refuted by another statement from equally reliable and authentic sources.

I received Gov. Ex. 104 from Mr. Hendricks who is the executive secretary of the Indiana State Medical Association. My best recollection is that Mr. Hendricks had heard something of these plans and had talked to me either over the phone or in a personal visit, about the plans referred to in that statement.

Defense counsel read Gov. Ex. 104 to the jury as follows:

Ladies and gentlemen, this is a letter dated June 22, 1937, on the official stationery of the Indiana State Medical As-

sociation, in which Thomas A. Hendricks, Executive Secretary, says to Dr. West (reading):

"We enclose a copy of the confidential report which gives details of the plan for a cooperative medical service in Washington for Federal employees."

The enclosure is a rather long one, marked "Confidential. For Private Circulation Only," and entitled "A Plan for a Cooperative Medical Service on a Periodic Payment Basis for Federal Employees and Their Families in Washington." I shall not take the time to read that exhibit, because it is a bit lengthy.

I wrote Gov. Ex. 103 to Mr. Hendricks, on June 27, 1937.

Defense counsel read Gov. Ex. 103 to the jury as follows:

"I am very greatly obliged to you for your letter of June 22, for the memorandum attached to it, and for the copy of a plan for a cooperative medical service on a periodic payment basis for Federal employees and their families in Washington.

"While we already had a copy of this plan and practically all of the information submitted in the memorandum attached to your letter, we are nevertheless grateful to you for sending us the material that accompanied your letter, and especially for the information pertaining to the small group in Washington that seems to be acting as a steering committee for the organization of cooperative medical services among various governmental departments. We had not been able to secure this particular piece of information. We had information for two or three months that a movement has been started to organize medical service plans for government employees. We have made very diligent efforts to ascertain all the facts, and we are still persisting in those efforts.

"Since the Atlantic City session Dr. Woodward has been in Washington for a large part of the time and has had interviews with officials of the H.O.L.C., the Resettlement Administration, the Brookings Institute, and numerous others. The only thing we have tried very hard to secure is a copy of the contract to be entered into between the cooperatives and their members. Our own efforts as well as the efforts of persons in high official positions in Washington have been altogether unavailing, and we have not

been able to secure a copy of the contract nor any specific information about its provisions. If you can succeed in securing any additional information we shall appreciate it if you will pass it on to us, just as we have fully appreciated your helpfulness in connection with other matters in the past.

"Very sincerely yours,"

I received Gov. Ex. 106 from Dr. Herbst and I wrote Gov. Ex. 105 in reply. (Defense counsel read Gov. Exs. 105 and 106 to the jury.) I recollect that I read Gov. Ex. 177. (Defense counsel read Gov. Ex. 177 to the jury.) Gov. Ex. 135 is an extract from the minutes of the Board of Trustees of the AMA of June 29, 1937. Gov. Ex. 152 is a letter which I wrote. (Defense counsel read Gov. Ex. 152 to the jury.) When I made the statement that "The principle of collective bargaining cannot properly be applied to medical service," (Gov. Ex. 152), I had in mind that you cannot apply mass production methods to medical service. I later withdrew (Gov. Ex. 152) my suggestion to the District Society that they develop a medical service plan under their own auspices.

I wrote Gov. Ex. 153 to Mr. Charles Wright who at the time this letter was written was a member of the Board of Trustees of the AMA. (Defense counsel read a portion of Gov. Ex. 153 to the jury.) Gov. Ex. 200 came to my attention. Gov. Ex. 294 came to my attention. It is a copy of the statement prepared by Dr. Woodward which later appeared as an article in the Journal on October 2, 1937. It is not exactly the same as some changes were made before publication. Gov. Ex. 293 is a copy of the Journal article of October 2, 1937.

I wrote Gov. Ex. 154.

Defense counsel read Gov. Ex. 154 to the jury as follows:

This is Exhibit 154, dated October 7, 1937, directed to Dr. C. B. Conklin, Washington, D. C., Secretary, Medical Society of the District of Columbia (reading):

"DEAR DR. CONKLIN:

"I am grateful indeed to you for your kindness in sending me a copy of the resolutions to be presented by the Executive Committee of the Medical Society of the District of Columbia and to be considered, as I understand it, at a meeting of that society to be held tonight.

"I confess that I feel somewhat concerned over the possibility of adoption of these resolutions by the District Society, because I am somewhat afraid that if they are adopted the promoters of Group Health Association, Inc. will be greatly encouraged and may be stimulated to exert efforts to extend these efforts beyond the scope that I understand they originally intended.

"I also entertain some fear that if the resolution is adopted as it now stands, the proponents of compulsory sickness insurance who are now devoting their efforts to the establishment of all sorts of voluntary insurance schemes, knowing full well that voluntary insurance has always been the forerunner of compulsory insurance, will redouble their efforts to bring about the establishment of all sorts of plans for group prepaid medical service. I fear that even the slightest implication of approval of the activities of incorporated groups may result in stimulating the organization of similar groups elsewhere than in the District of Columbia, and possibly give considerable impulse to the development of corporation practice.

"You know very well, of course, that I have no disposition whatever to intrude in the affairs of the Medical Society of the District of Columbia, and I hope that neither you nor anybody else will feel that this letter is intended to be even in the least degree in the nature of such intrusion.

"With my sincere good wishes, I am

"Very truly yours,"

Well, about the time that letter was written there was a very determined effort being made to promote movements designed to bring about the establishment of systems of compulsory sickness insurance in some of the states, and the proposal had been made that such a system should be organized under the auspices of the Federal Government. It is true that in many of the instances where compulsory sickness and insurance plans have been put into effect the forerunners of those plans were voluntary sickness insurance plans. The American Medical Association has made most exhaustive and careful study of the workings of compulsory sickness insurance plans or systems in several countries, and is convinced beyond any doubt whatever that they do not contribute to the advancement of scientific medicine and that they do not serve the best interests of

the public. The Association believes and its House of Delegates has repeatedly expressed its opinion and established its policy, that a system of compulsory sickness insurance in the United States on a Federal basis would be destructive of all the best values and elements——

I received Gov. Ex. 111. I wrote Gov. Ex. 110 to Dr. Conklin in reply to Gov. Ex. 111. (Defense counsel read Gov. Ex. 110 to the jury.)

The annual conference of the secretaries of the constituent state medical societies is held at the office of the AMA each year to which the secretaries of all constituent state associations are invited along with the editors of all state medical journals and the officers of constituent state medical associations. The purpose of the conference is to give the secretary and editor of the various state associations an opportunity to become acquainted with the actions of the AMA, to confer among themselves, and with the official representatives of the Association, including the heads of departments and the members of the boards of trustees as to matters of common interest relative to the organization sources and the work of the state associations in relation to the work of the AMA, or their relation to other medical organizations.

I received Gov. Ex. 108 and wrote Gov. Ex. 109 in reply. (Defense counsel read Gov. Ex. 108 and 109 to the jury.)

I wrote Gov. Ex. 112 to Dr. Tibbals who is secretary of the Utah State Medical Association. The only occasion for this letter was to reply to his letter of October 26. (Defense counsel read Gov. Ex. 112, dated October 29, 1937, to the jury.)

Q. Doctor, when you made the statement:

"The American Medical Association has very actively opposed the plans of Group Health Association, Incorporated,"

to what did you refer as the opposition contained therein?

A. Our efforts to develop all the facts that could be had in order that they might be published for the information of the profession; the various medical organs of the country, and who else might be interested.

Q. What other form of opposition up to that time had been instituted in regard to anything connected with Group Health Association?

A. Nothing other than was incidental to efforts to collect the facts for the purposes indicated.

I wrote Gov. Ex. 114 to Dr. Conklin. (Defense counsel read Gov. Ex. 114 to the jury.) I sent Gov. Ex. 115 and received Gov. Ex. 116. Following these telegrams the conferences of November 6 at Chicago between me, Dr. Hooe, Dr. McGovern, Dr. Woodward and Dr. Leland was held.

I wrote Gov. Ex. 113 to Dr. Tibbals and gave him additional information which he requested on November 4.

Defense counsel read Gov. Ex. 113 to the jury.

Gov. Ex. 117 is a resume of the conference of November 6 held at Chicago. It is not a verbatim report.

Q. On page 7, I direct your attention to the statement made by Dr. Hooe, and the statement made by Dr. West. Did you hear those statements read as from that abstract, Doctor?

A. I think I heard it read here.

Q. Does that abstract correctly report what you said on that occasion?

A. No, it doesn't.

The Court: You may take the opportunity of reading that part of it.

The Witness: I don't know whether it is a matter of great importance; it does support my statement that it is not a verbatim report. It says:

"Dr. Hooe: Is it not, in your opinion, most reasonable that the hospitals should acquiesce in this matter?

"Dr. West: It is reasonable that they should do it, but as to whether or not they will, that's another question. Suppose they don't?"

Now, I am quite sure that I did not express a definite opinion as to whether it was reasonable, but I raised the question as to whether it would do any good to attempt what was proposed. As a matter of fact, I believed the hospitals should control their own affairs.

I wrote Gov. Ex. 161 to Dr. Knopf. The only occasion for writing this was in response to his letter of November 3. (Defense counsel read Gov. Ex. 161 to the jury.) I wrote Gov. Ex. 118.

Defense counsel read Gov. Ex. 118 to the jury as follows:

It is dated November 9, 1937, addressed to Dr. Robert A. Hooe, 1746 K Street, Northwest, Washington, D. C. (reading):

"MY DEAR DR. HOOE:

"I am sending you herewith by air mail special delivery two copies of an abstract of the notes taken at the conference held in my office on last Saturday. I am also sending you a copy of this abstract by registered mail.

"We were greatly pleased to have a visit from you and Dr. McGovern, and I hope that matters will be satisfactorily adjusted."

The abstracts referred to were those of the conference in Chicago on November 6 (Gov. Ex. 117). I received Gov. Ex. 156 to which Gov. Ex. 155 is my reply. (Defense counsel read Gov. Ex. 156 and 155 to the jury.) The instructions referred to in Gov. Ex. 155 are those in Gov. Ex. 135, Minutes of Meeting of Board of Trustees, June 29, 1937, in which it is stated: "That Doctors Woodward and Leland be requested to go to Washington to see what they can learn and try to advise the Medical Society of the District of Columbia if that Society is willing to accept advice." Later other instructions were given at a meeting of the Board of Trustees where Dr. Fishbein, as editor of the Journal, and I, as secretary and general manager of the Association, were instructed to develop the facts as far as we could about Group Health and have a statement prepared for publication in the Journal.

I wrote Gov. Ex. 120 to Dr. Wise on November 16, 1937, simply by way of answer to a letter from him of November 12, 1937. In the preparation of replies to letters which I received from various individuals I did not collaborate with any of my fellow officers of the AMA, except, perhaps, if I wanted information that I did not have I may have asked them for it before I wrote the letter.

(Defense counsel read a portion of Gov. Ex. 137 to the jury.) I was present at this meeting of the Judicial Council and these minutes were prepared by me or under my supervision. Several complaints had been received about Dr. Richard Cabot, a brother of Dr. Hugh Cabot, and these were referred to the Judicial Council. Apparently the Judicial Council thought it had no jurisdiction over complaints of this character because I was instructed to refer

them to the secretary of the Massachusetts State Society and that was the end of the matter.

(Defense counsel read Gov. Ex. 120, letter dated November 16, 1937, from Dr. West to Dr. Wise, to the jury.)

Q. Doctor, when you stated in Gov. Ex. 120 that you had worked as closely as possible with the Medical Society of the District of Columbia, to what did you refer?

A. Well, the American Medical Association worked as closely as possible in cooperation with all consituent state and territorial associations, but I suspect that in this particular instance I had some reference to the matters that were at the time of interest in Washington.

Q. Do you recall now what you referred to when you stated that your efforts began before the Medical Society of the District of Columbia became very active?

A. I think that is true. I think we began an effort to develop the facts about this matter before the Medical Society of the District of Columbia began any action whatever, possibly before they were informed about it. I am not sure of that, but I think it is quite possible.

Q. And those were the efforts which you told us about yesterday?

A. To some extent; yes, sir.

Q. Were there any others which you can recall which related to other matters than the collection of data?

A. As I stated yesterday, anything that transpired was incidental to our efforts to develop the facts.

Gov. Ex. 136 is the minutes of the Board of Trustees meeting of November 18 and 19, 1937. I was present at this meeting as secretary and general manager of the AMA. (Defense counsel read Gov. Ex. 136 to the jury.) I do not recall that the AMA had done anything further with reference to Group Health than is reported in these minutes. It had simply made an effort to develop the facts and to make ready to publish the facts.

I wrote Gov. Ex. 157. (Defense counsel read Gov. Ex. 157 to the jury.) I wrote Gov. Ex. 159 merely in reply to Dr. Poling's letter. (Defense counsel read Gov. Ex. 159 to the jury.) Gov. Ex. 162 is a letter which I wrote in reply to Dr. Poling's letter of December 27, 1937.

Defense Counsel read Gov. Ex. 162 to the jury as follows:

"DEAR DOCTOR POLING:

I have before me your letter of December 27 and am greatly obliged to you for your kindness in sending me a copy of the resolution adopted by the Mahoning County Medical Society pertaining to the Group Health Association, Inc., of Washington, D. C.

The American Medical Association has done all that it could to oppose this movement in Washington, having begun its efforts in that direction long before the corporation was formed. I am sure you will be interested to know that an official ruling has been issued in Washington to the effect that the appropriation of money by the Home Loan Bank Board for the purposes of the Group Health Association, Inc., was without authorization. However, I am informed that in spite of this ruling the corporation is going ahead with its plans. Doctor Woodward, Director of our Bureau of Legal Medicine and Legislation, has just returned from Washington, having gone there for the purpose of giving such aid as he could to the Medical Society of the District of Columbia in the effort which that Society is making to combat the activities of the Group Health Association, Inc.

As I see it, it is a rather remarkable thing that an agency of the federal government would appropriate money to support a corporation that is to engage in the practice of medicine in the face of the fact that the laws of many states specifically declare corporation practice to be illegal. The Home Owners' Loan Corporation—of the Home Loan Bank Board which is an affiliate of the Home Owners' Loan Corporation—in a brief that has been submitted, takes the position that the Home Owners' Loan Corporation and the Home Loan Bank Board are not agencies of the federal government in the same sense that departments and bureaus of the government are agents. As I understand it, the position is taken in this brief that the monies of the Home Owners' Loan Corporation and the Home Loan Bank Board are not appropriated directly by the federal government but are secured from the public, and that for that reason the Corporation and the Board are not amenable to the same rules as those that apply to other governmental units.

"A number of medical societies in different parts of the country have taken action somewhat similar to that which has been taken by the Mahoning County Medical Society. I presume that you saw the article which appeared in the Journal of the American Medical Association some weeks ago pertaining to this matter.

"With my sincere good wishes for you and the Mahoning County Medical Society in the New Year, I am

"Very truly yours,"

Gov. Ex. 145 is an opinion of the Judicial Council signed by individual members of the Council. (Defense Counsel read Gov. Ex. 145 to the jury.) I was present during part of the hearing of this particular appeal.

I received Gov. Ex. 124.

Defense counsel read Gov. Ex. 124 to the jury as follows:

Gov. Ex. 124, on the stationery of the Harris County Medical Society, Houston, Texas. It is signed "A. T. Talley, Chairman, Board of Censors, and directed to Dr. West."

"DEAR DOCTOR:

"One of our members has accepted a position on the surgical staff of the so-called Group Health Association, made up of the federal employees of the HOLC, located in Washington, D. C.

"Through correspondence with the District of Columbia Medical Society and the unanimous opinion of our local Society, this type of practice is considered unethical and we would appreciate a letter from you stating the view held by the national Association with reference to practice of this type.

"Appreciating an early reply, I am

"Yours very sincerely, A. T. Talley, Chairman, Board of Censors, Harris County Medical Society."

Gov. Ex. 123 is my reply to Gov. Ex. 124.

Defense counsel read Gov. Ex. 123 to the jury as follows:

This Gov. Ex. 123 is dated February 24, 1938. It is directed to Dr. A. T. Talley, Chairman, Board of Censors, Harris County Medical Society, Houston, Texas.

"DEAR DOCTOR TALLEY:

"Your letter of February 16 was received while I was very busily engaged with a meeting of the Board of Trustees

of the American Medical Association, in which fact is to be found the explanation for my delay in replying.

"The Group Health Association, Inc., of Washington, D. C., is, as its title indicates, an incorporated body. The laws of a number of the states and, as I understand it, the law of the District of Columbia specifically prohibits corporations from engaging in the practice of medicine. My information is to the effect that the United States District Attorney for the District of Columbia and the Corporation Counsel of the District government have both rendered opinions to the effect that Group Health Association, Inc., in conducting the practice of medicine, is operating in violation of the law.

"I am informed that the officers of Group Health Association, Inc., maintain that the corporation is not itself engaged in the practice of medicine but that the physicians in its employ, licensed to practice in the District of Columbia, are practicing medicine in accordance with their rights under their licenses. In my opinion, this is, of course, simply an evasion since persons employed by a corporation are the servants of the corporation. I can hardly conceive that the physicians who have accepted employment with Group Health Association, Inc., are ignorant of the fact that they are employees of a corporation engaged in the practice of medicine and that in that capacity they are a party to a violation of the law since, certainly, it is reasonable to suppose that they are informed of all the facts. Based on the information available to us here, it is my purely personal opinion that a physician who becomes an agent of a corporation engaged in the practice of medicine violates the Principles of Medical Ethics. This, my personal opinion, is offered, of course, for whatever you may consider it to be worth.

"I understand that the officers of Group Health Association, Inc., have stated that if the courts decide that the corporation is illegally engaged in the practice of medicine, the enterprise will be organized on a different basis and will proceed with its operations.

"With most cordial good wishes, I am

"Very truly yours,"

I received Gov. Ex. 122. The original was forwarded by my office to Dr. Follansbee as chairman of the Judicial

Council. Defense counsel read Gov. Ex. 122 to the jury as follows:

"April 21, 1938.

"DR. WEST:

"Dear Doctor: Raymond E. Selders member of the Harris County Medical Society has been indicted by the Society of unethical practice for accepting a position on the surgical staff of the Group Health Association made up of federal employees of the HOLC located in Washington, D. C., due to the fact that Dr. Selders is doing this practice outside Harris County Texas we want an official opinion from the Judicial Council of the American Medical Association that is unethical for him to do this practice without which the Board of Censors will recommend to their Society that the matter be referred to the Judicial Council of the Medical Association direct for adjudication. An immediate answer by wire appreciated as trial comes up the 27th of this month.

"A. T. Talley."

Q. Why was it that this telegram which was directed to you at Chicago, was sent on to Dr. Follansbee?

A. Because it was a matter for decision by the Judicial Council and Dr. Follansbee is the chairman of that Council. It was not a matter I could decide.

Q. What other connection had you with the matter than that when you received the telegram you sent it to Dr. Follansbee?

A. I can't recall whether we had other communications relating to this particular matter or not, but in so far as I can now recall it was probably the first communication we received in connection with the matter pertaining to the membership of Dr. Selders in the Harris County Society and the situation which had developed in Washington.

Q. What other official connection did you take with regard to this matter than to forward this telegram as you have testified?

A. My recollection is that I notified Dr. Talley that the matter had been disposed of.

Q. Do you recall now of having personally done anything further in connection with the matter than what you have told us?

A. I have no recollection of anything other than to transmit any communications which the Judicial Council might

have directed me to send to the Harris County Medical Society.

Gov. Ex. 125 is my reply to Gov. Ex. 122 and it is dated April 21, 1938. Gov. Ex. 147 is a letter which I sent to Dr. Follansbee on April 21, 1938.

Defense counsel read Gov. Ex. 147 to the jury as follows:

"I am enclosing a telegram received this morning from Dr. A. T. Talley, Chairman of the Board of Censors, Harris County Medical Society, Houston, Texas. Doctor Talley has been informed that this telegram has been referred to you as Chairman of the Judicial Council.

"As I understand the matter, Dr. Raymond E. Selders, a member of the Harris County Medical Society, accepted a position with the Group Health Association, Inc. in Washington, D. C., a corporation now engaged in the practice of medicine in the District of Columbia. You may recall that this corporation was financed by the Home Loan Bank Board through the Home Owners Loan Corporation and that this action was rather severely criticized by an official committee of Congress.

"We were definitely informed that the United States District Attorney for the District of Columbia has ruled that the Home Loan Bank Board had no legal authority for providing funds for the support of the Group Health Association, Inc., that official rulings have been issued by duly constituted authorities in Washington to the effect that corporations can not legally engage in the practice of medicine, and that the Group Health Association, Inc., is operating in violation of the insurance laws of the District of Columbia.

"The Medical Society of the District of Columbia has, as I understand it, expelled one member who accepted employment with the Group Health Association, Inc., and this action has created a great storm in Washington, which has been widely and persistently heralded in the local press. As stated in Doctor Talley's telegram, charges have been preferred against Doctor Selders, a member of the Harris County Medical Society, and apparently the board of censors of that society is undecided as to what should be done. It seems to me that the first thing the board of censors should do is to take the matter up with the council of the State Medical Association of Texas, but apparently the members of the board of censors feel that, as Doctor Selders

is acting as an agent of the Group Health Association, Inc., outside of Texas, the matter is one for determination by the Judicial Council of the American Medical Association.

"Very sincerely yours,"

Gov. Ex. 148 was received by me and is in reply to Gov. Ex. 147.

Defense counsel read Gov. Ex. 148 to the jury as follows:

"April 27, 1938.

DEAR DR. WEST:

Acknowledging receipt of yours of April 21st concerning the situation of Dr. Raymond E. Selders and the Harris County Medical Society of Texas.

The telegram of A. T. Talley, Chairman of the Board of Censors, Harris County Medical Society, asking for an official opinion and ruling by the Council, is a rather mixed-up situation, on which I would not express an opinion without further information. Upon receipt of your letter of April 21st I immediately wired Dr. Talley as follows:

'Is Selders in good standing in County Society? Has by-law procedure been strictly followed? Send air mail constitution and by-laws county and state.'

Up to this afternoon I have received no reply whatsoever. There would be a question in my mind of the jurisdiction of the Harris County Society to the extent of expelling a man for actions occurring so far away from the County Society as to be difficult of proof and also difficult to permit a defense by the accused. The statement in the telegram that the County Society would put this entire matter up to the Judicial Council of the American Medical Association as a primary organization for action, I believe is not provided for in our constitution except on investigation of the circumstances by the Judicial Council and request by them for action by the president. The telegram also says that the trial comes up on the 27th of this month, which is today. It seems strange to me that they should go so far as to be up against the actual trial of the man before they come to the Judicial Council for advice. It looks to me like a very precipitated action, a situation in which I am not satisfied to place the Judicial Council in any position where just criticism can be brought before them. I have not replied to Dr. Talley's telegram and will not until I receive further word from him.

If you have any further information or any suggestions on this case I shall be pleased to receive them.

Sincerely yours, Geo. Edw. Follansbee, Chairman."

I received Gov. Ex. 127. It is addressed to the Judicial Council, attention of Dr. Olin West, secretary. I think I forwarded this to the Judicial Council.

Defense counsel read Gov. Ex. 127 to the jury as follows:

It is dated May 1, 1938. It is on the official letterhead of the Harris County Medical Society, of Houston, Texas. It is directed to the Judicial Council, and then underscored at the top "Attention of Dr. Olin West, Secretary."

"GENTLEMEN:

"The Harris County Medical Society met in executive session, April 27th, and passed the following resolution concerning the case of Dr. Raymond E. Selders' contract with the Group Health Association, Incorporated, 1328 Eye Street, N. W. Washington, D. C.

'Dr. Raymond E. Selders, a member of our Society, was indicted by the Board of Censors for unethical practice upon a complaint from the District of Columbia Society, through Dr. Holman Taylor, Secretary of the State Medical Association of Texas, that he had accepted a position on the surgical staff to do contract practice for a group health association, made up of federal employees of the H.O.L.C. in Washington, D. C.

'Since reading the indictment to the Society at the March Business Meeting, the Board of Censors had had an opportunity to study the By-Laws of the American Medical Association in reference to this matter and we find in Chapter IX, Section 1, pertaining to duties of standing committees and councils words which according to our interpretation, mean that in any controversy between the District of Columbia and Dr. Selders, who is a member of the State Medical Association of Texas and constituent associations, should be referred by this Society directly to the Judicial Council of the American Medical Association for adjudication.

'This Board of Censors moves that this be done.'

In accordance with duly passed motion recited above, the Secretary herewith transfers this question of Dr. Selders' contract to the Judicial Council of the American Medical Association for adjudication, and attach herewith a copy of

the By-Laws and Constitution of both the Harris County Medical Society and the Texas State Medical Association.

The Secretary wishes to outline the history of this case and attach such copies of correspondence as will help the Council in this Adjudication:

The first intimation we received concerning this contract was a copy of a letter from Dr. Holman Taylor, addressed to Dr. C. B. Conklin, Secretary of the District of Columbia Medical Society as follows:

'I thank you for your favor of October 30th, in reply to my letter of October 27th, and having to do with the health insurance situation in the District of Columbia, just received.

'I note with interest that a member of the Harris County (Texas) Medical Society is a member of the staff of the institution which is to be set up in Washington as a beginner in "State Medicine"; that, in fact, he will take charge of the surgery in the new set-up, Dr. Raymond Everett Selders.

'Please let me know just as soon as the situation has developed in the District of Columbia to such an extent that charges of unethical conduct may be successfully lodged against Dr. Selders. I will see that the facts in the case are laid before his society. I don't believe the members of that organization will stand for anything of this sort, but even so, they are very fair down there, and rather discriminating. They tend to their knitting like few other organizations of the sort with which I am acquainted. If we will give them the facts, they will act; without the facts, they will hardly do anything about it.

(Signed) Dr. Holman Taylor.'

This letter was read by me to our Society and they voted to refer it to our Board of Censors. Our Board of Censors wrote the following letter to Dr. Taylor:

'The Board of Censors of the Harris County Medical Society in meeting this date have read your letter re Dr. Selders and his alleged association with the "Beginning of State Medicine" in Washington, D. C. We are without any facts in the case and until we have same are powerless to act; Kindly let us have such facts as you may have. Signed by Board of Censors.'

Inquiry was also sent on January 14, 1938, by Dr. A. T. Talley, recently elected Chairman of our Board of Censors,

to the Secretary of the Medical Association of Washington, D. C., and received prompt reply from Dr. C. B. Conklin as follows:

'In reply to your letter of January 14th, 1938, I would state that two members of this society accepted employment; one at $2,400.00 to take all calls, another at $4,800.00. The latter resigned from H.O.L.C. after his "trial" before an appropriate committee of the Society for violation of provisions of the Society's Constitution lasted one night. The other continued; his hearing is now completed. It would seem that he will lose his membership. It must be noted that much praise was given him by the full-time governmental attorneys who represented him.

(Signed) C. B. Conklin, Secretary.'

Inquiry was sent Dr. Holman Taylor regarding the status of this contract and prompt answer was received on February 18th, as follows:

'Replying at once to your letter of inquiry of February 16, with reference to the policies of the State Medical Association as relate to the employment of any of its members by such organizations as the Group Health Association of employees of the HOLC, at Washington, D. C., beg to say that said policy is definitely and directly against anything of the sort. I presume you do not care to have me go into detail and recite the basis of this conclusion. For my part I have personally studied the set-up in Washington referred to here, and it is my personal and official opinion that it is, or was a while back, in direct contravention of the policies of the American Medical Association, and of the State Medical Association, from an ethical point of view. I reiterate in order to make sure that I meet your wishes in this respect.

I am sure you will appreciate that your Councilor, and the Board of Councilors constitute our final authority in all matters of medical ethics. My reply is based entirely upon my duties as Secretary of the State Medical Association, and not in any particular as an authority on the problems of medical ethics.

(Signed) Holman Taylor.'

Inquiry was sent to Dr. Olin West and prompt reply was received on February 24th:

'The Group Health Association, Inc., of Washington, D. C., is, as its title indicates, an incorporated body. The

laws of a number of the states and, as I understand it, the law of the District of Columbia specifically prohibits corporations from engaging in the practice of medicine. My information is to the effect that the United States District Attorney for the District of Columbia and the Corporation Counsel of the District government have both rendered opinions to the effect that Group Health Association, Inc., in conducting the practice of medicine, is operating in violation of the law.

'I am informed that the officers of Group Health Association, Inc., maintain that the corporation is not itself engaged in the practice of medicine but that the physicians in its employ, licensed to practice medicine in the District of Columbia, are practicing medicine in accordance with their rights under their licenses. In my opinion, this is, of course, simply an evasion since persons employed by a corporation are the servants of the corporation. I can hardly conceive that the physicians who have accepted employment with Group Health Association, Inc., are ignorant of the fact that they are employees of a corporation engaged in the practice of medicine and that in that capacity they are a party to a violation of the law since, certainly, it is reasonable to suppose that they are informed of all the facts. Based on the information available to us here, it is my purely personal opinion that a physician who becomes an agent of a corporation engaged in the practice of medicine violates the Principles of Medical Rules. This, my personal opinion, is offered of course, for whatever you may consider it to be worth.

'I understand that the officers of Group Health Association, Inc., have stated that if the courts decide that the corporation is illegally engaged in the practice of medicine, the enterprise will be organized on a different basis and will proceed with its operation.

(Signed) Olin West.'

Based upon the above opinions, on March 9th, 1938, the Board of Censors of the Harris County Medical Society presented the following resolution to the Society:

'The Board of Censors of your Society does hereby formally prefer charges of unethical practice against one of your members, Dr. Raymond E. Selders.

'This indictment charges him with accepting a position on the surgical staff of a group health association, made up

of Federal employees of the Home Owners Loan Corporation, located in Washington, D.C. This type of practice is unethical as judged by Article VII, Section 3 of the American Medical Association's Code of Ethics, in that:

'(1) The compensation is inadequate to secure good medical service.

'(2) It interferes with reasonable competition among the doctors in the City of Washington, D. C.

'(3) It interferes with the free choice of a physician by the patient.

'(4) It is contrary to sound public policy.

(Signed) Board of Censors'.

In accordance with the By-Laws and Constitution of our Society the Secretary notified Dr. Raymond E. Selders by registered mail and received his return receipt. He also received Dr. Selders' reply to these charges, copy of which is attached herewith.

On April 21st Dr. A. T. Talley, received the following wire in response to inquiry sent to Dr. Olin West:

'Your telegram has been referred to the Chairman of the Judicial Council.

(Signed) Olin West'

On April 23 the following telegram was received by Dr. Talley:

'Is Selders in good standing in County Society. Has By-Law procedure been strictly followed? Send Air Mail constitution and By-Laws County and State.

(Signed) Geo. Edw. Follansbee, Cleveland, Ohio.'

Inasmuch as the trial was set for April there was inadequate time for the Board of Censors to carry out the instructions of the Chairman of the Judicial Council, and inasmuch as the question of jurisdiction was an important one, there seemed to be no other proceeding other than to interrupt the trial with the resolution set forth in the beginning of this letter, and await the adjudication of the Judicial Council.

In reply to the above telegram, Dr. Raymond E. Selders was in good standing when the charges were read March

30th. On April 1st he became delinquent and is now on the rolls of the Harris County Medical Society and the Texas State Medical Society, and may upon payment of his dues within a year be reinstated.

It is my opinion that By-Law procedure both County and State has been strictly followed.

The Harris County Medical Society respectfully requests adjudication on this contract from the Judicial Council of the American Medical Society before proceeding with the trial of Dr. Selders on charges preferred by its Board of Censors.

Sincerely yours, Walter A. Coole, Secretary."

And then this appears:

"cc. Dr. Olin West, Dr. Holman Taylor, Dr. John T. Moore, Dr. A. T. Talley. Minutes Harris County Medical Society."

My recollection is that this matter received official consideration by the Judicial Council, and I think it is quite probable I communicated with the Harris County Medical Society to advise them of any conclusion that may have been reached by the Judicial Council. Gov. Ex. 126 is a letter which I sent to Dr. Walter A. Coole, Secretary, Harris County Medical Society, dated March 5, 1938.

Defense counsel read Gov. Ex. 126 to the jury as follows:

"I have before me a carbon copy of your communication addressed to the Judicial Council of the American Medical Association under date of May 1, which will be referred at once to the Chairman of the Judicial Council.

I infer from a letter which I have received from Doctor Follansbee, Chairman of the Judicial Council, that he has communicated with Dr. A. T. Talley, Chairman of the Board of Censors of Harris County Medical Society. Doctor Follansbee informs me that he asked Doctor Talley to send him a copy of the constitution and by-laws of the Harris County Medical Society and a copy of the constitution and by-laws of the State Medical Association of Texas but that this material has not been received by him. I shall appreciate it very much if you will be good enough to send the copies of the constitutions and by-laws of the Harris County Medical Society and the State Medical Association of Texas to Doctor Follansbee, whose address is

Dr. George Edward Follansbee, 629 Euclid Avenue, Cleveland, Ohio. I shall appreciate it also, if it is not too much trouble, if you will send copies of such constitutions and by-laws to me so that I may have them available for the next meeting of the Judicial Council to be held about June 12.

Very sincerely yours,"

Gov. Ex. 128 is a letter which I wrote on May 5, 1938.

Defense counsel read Gov. Ex. 128 to the jury as follows:

The letter which has just been identified is upon the official letterhead of the American Medical Association, dated as stated, directed over the signature of Dr. West to Dr. George Follansbee, at Cleveland, Ohio.

"DEAR DOCTOR FOLLANSBEE:

"I have been away for a few days and on returning this morning find on my desk your two letters of April 27 to one of which Miss Nichoff has already replied.

"I am enclosing a communication addressed to the Judicial Council which is signed by the secretary of the Harris County Medical Society."

Q. I ask you if the communication addressed to the Judicial Council and signed by the secretary of the Harris County Society is the communication which I just read to the jury, dated May 1, 1938.

A. I presume that it is.

Mr. Leahy:

"It appears that the Harris County Medical Society desires to make the Judicial Council responsible for any action that may be taken with respect to the membership status of Dr. R. E. Selders who, as I am informed, is now a member of the surgical staff of Group Health Association, Inc., of Washington. In so far as I am informed, the Medical Society of the District of Columbia has not taken any definite action with respect to Doctor Selders' membership in the Harris County Medical Society."

Then follows an asterisk, with a note in ink: In whose handwriting is that?

A. Mine.

Mr. Leahy:

"Except as the matter is referred to in the enclosed communication,

"There is, therefore, in so far as I can see, no question to be considered by the Judicial Council unless the Medical Society of the District of Columbia has registered complaint with the State Medical Association of Texas or with the Harris County Medical Society. If that has been done, I have not been informed of it.

"I have written Doctor Coole acknowledging receipt of the communication addressed to the Council and have asked him to send to you a copy of the constitution and by-laws of the Harris County Medical Society and a copy of the constitution and by-laws of the State Medical Association of Texas. I have also asked him to send copies to me so that they will be available at the meeting of the Judicial Council."

I don't think the Judicial Council ever took any action with respect to Dr. Selders' membership. It is my recollection that it was finally decided that it had no jurisdiction of the matter as it then stood. Nothing further was done except to notify the Harris County Medical Society that the Judicial Council had no jurisdiction in the matter as it then stood.

I wrote Gov. Ex. 165 in response to a letter from Dr. Erskine dated September 9, addressed to Dr. Fishbein.

Defense counsel read Gov. Ex. 165 to the jury as follows:

"September 12, 1938.

DEAR DR. ERSKINE:

I have before me a copy of your letter of September 9 addressed to Dr. Fishbein.

I gather from your letter that you do not understand that the Group Health Association in Washington is a corporation engaging in the practice of medicine. Inasmuch as our information has been to the effect that the practice of medicine by a corporation is illegal under the laws of many states and that many court decisions have been handed down declaring the practice of medicine by corporations to be illegal, and because the American Medical Association has opposed illegal practice as well as for other reasons perfectly obvious to those who are familiar with the facts, the American Medical Association has opposed the Group Health Association, Inc. The opposition of the American Medical Association has been based on the policies established by its House of Delegates in which all con-

stituent state medical associations are represented by their own duly elected delegates. Incidentally, there has been a very persistent effort on the part of certain agencies and groups to make it appear that members of the administrative personnel of the American Medical Association has presumed to attempt to define the policies of the Association which, of course, is quite untrue. The officers and members of the official bodies and members of the administrative personnel of the Association have done nothing more nor less than try to comply with official instructions received from the House of Delegates and to maintain and carry out the policies established by that body.

With most cordial good wishes, I am

Very truly yours,"

Q. Is it or is it not a fact that the administrative heads of the American Medical Association have no control over establishing policies of the American Medical Association?

A. It is a fact that they have nothing to do with the establishment of the policies of the American Medical Association. Those policies are established by the House of Delegates.

Q. What jurisdiction have the administrative personnel of the American Medical Association with respect to the policies other than to carry out the directions given by the House of Delegates?

A. Well, it is their simple duty to do what they can to maintain and carry out the policies established by the House of Delegates. It is a fact, of course, that under the constitution and by-laws the board of trustees is empowered to act for the House of Delegates in the interim between meetings of the House, and in certain instances matters have arisen in which action was essential and the board of trustees has been given instructions to the administrative personnel as to what should be done.

I wrote Gov. Ex. 129, dated September 21, 1938, to Dr. Erskine merely in response to his letter of September 9, 1938, to Dr. Fishbein.

Defense counsel read Gov. Ex. 129 to the jury, as follows:

"I have before me your letter of September 9 addressed to Dr. Fishbein to which is attached a copy of a letter addressed to you by Dr. A. H. Woods.

"It seems evident to me that neither you nor Dr. Woods understand the situation that has developed in Washington. In the first place, Group Health Association, Inc., is a corporation engaged in the practice of medicine. The laws of many of the states and of the District of Columbia itself contain provisions declaring practice by corporations to be illegal. While it is true that one of the Judges of the United States District Court for the District of Columbia a trial court, not an appellate court, has handed down a decision declaring Group Health Association, Inc., to be legal, the fact remains that the United States District Attorney for the District of Columbia specifically ruled that Group Health Association, Inc., was a corporation illegally engaged in the practice of medicine, and the Corporation Counsel of the District of Columbia expressed his opinion to the effect that Group Health Association, Inc., was unlawfully engaged in the insurance business. Since the decision of the United States District Court for the District of Columbia a suit has been instigated by individual physicians in Washington seeking a decision from a higher court as to the legality of the activities of the Group Health Association, Inc.

"With respect to the activities of the Department of Justice pertaining to the American Medical Association, I am sure that you will be interested to know that we have never had any communication whatever from the Department of Justice with respect to this matter, although various newspaper statements have been released by an official of the Department of Justice which, designedly or not, have undoubtedly poisoned the public mind against the organized profesion in the United States. The timing of these newspaper releases has been a most interesting factor in the situation. The facts about these matters were submitted to the House of Delegates at San Francisco as well as to the House of Delegates at the special session held in Chicago last week, and the officers and members of the administrative personnel of the Association have been given definite instructions by the House of Delegates, which is the policy-making body of the Association

"The American Medical Association has announced that it has no objection whatever to any fair and reasonably conducted investigation of its affairs by any official agency. As a matter of fact, an agent of the Federal Bureau of Investigation has recently visited the offices of the Association and

has been shown everything that he asked to see. In my opinion it is highly important to remember that the Department of Justice has sent no communication about the matter to the officers of the American Medical Association, nor did it make any effort whatever to ascertain from the Association itself any facts pertaining to the matters referred to in these newspaper releases."

At or about this same time agents of the Federal Bureau of Investigation were in the offices of the AMA and they were at liberty to see anything that was in the files.

I wrote Gov. Ex. 132 to Dr. Erskine, president of the Iowa State Medical Society, on October 8, 1938. It was written merely in response to Dr. Erskine's letter of September 30.

Defense counsel read Gov. Ex. 132 to the jury as follows:

"Your letter of September 30 was received in due time. I do not know how I can convince you that the statements made in my letter are not mistakes, other than to assure you that I know exactly what I said and I know that the situation is as stated.

"The American Medical Association has nothing whatever to do with the expulsion of any member of the Medical Society of the District of Columbia. One member who was expelled has appealed to the Judicial Council of the American Medical Association and his appeal will be heard in due time.

"With reference to the statement at the end of the second paragraph of your letter urging me to make a complete and thorough investigation of the facts with respect to the situation that has developed in Washington, I wonder what you think we have been doing all this time. It is possible that you may be convinced that there was grave question as to the legality of the activities of Group Health Association, Inc., when I tell you that the United States District Attorney for the District of Columbia held that that organization was engaged unlawfully in the practice of medicine, and the Corporation Counsel for the District of Columbia held that it was engaged unlawfully in the business of insurance. The matter came up before the District Court of the United States for the District of Columbia, a trial court, not an appellate court, and Judge Jennings Bailey, one of the judges of the District Court, handed down an opinion to the effect that Group Health Association, Inc., was not

violating either of the laws named, but cited no authority for his decision with respect to the law relating to the practice of medicine. Whereupon three physicians in the District of Columbia, in their individual capacity, have instituted proceedings looking toward a determination as to whether Group Health Association, Inc., is practicing medicine in violation of law, and asking an order to restrain the Association if the court finds that it is.

'I believe that I have already stated to you in previous correspondence that the practice of medicine by corporations is forbidden under the laws of a number of the states and that a very considerable number of decisions, including decisions of Supreme Courts of several states, have declared the practice of medicine by corporations to be illegal.

"We have in our files a copy of the by-laws of Group Health Association, Inc., and have had it for some months. The staff of physicians of that corporation are employees of the corporation and are not employees of individual patients who have paid membership dues in the corporation in the sense that a person is a patient of a private physician. As I understand the matter, physicians in the employ of Group Health Association, Inc., are responsible to the board of directors of the organization and can be hired or discharged at the will of that board. However all this may be, please be assured that I appreciate your interest in writing and I shall be glad to hear from you at any time and to give you such information as I can offer that is available to me.

"With most cordial good wishes, I am

"Very truly yours,"

I wrote Gov. Ex. 133 to Dr. Fred Hammerly on October 12, 1938. The only occasion for writing this was in response to his letter of September 24 addressed to Dr. Fishbein.

Defense counsel read Gov. Ex. 133 to the jury as follows:

"I have before me your letter of September 24 addressed to Dr. Morris Fishbein and referred to me for reply.

"My information is to the effect that Group Health Association, Inc., in Washington, D. C., is a corporation established for the purpose of providing medical service to its members through the instrumentality of an employed group of physicians. I am informed that the Medical Society of the District of Columbia has not approved the plans of that

Association. I am further informed that the United States District Attorney for the District of Columbia held that Group Health Association, Inc., was engaged unlawfully in the practice of medicine, and that the Corporation Counsel for the District of Columbia held that it was engaged unlawfully in the business of insurance.

"It is my understanding that the rulings of the United States District Attorney and of the Corporation Counsel were made the subject of an application to the District Court of the United States for the District of Columbia, a trial court, not an appellate court, for a declaratory judgment and that one of the judges of the District Court held that Group Health Association, Inc., was not violating either of the laws named.

"It is also my understanding that an appeal has been taken from the decision of the judge in the trial court, although I have no authentic information concerning this.

"Very truly yours,"

By Mr. Leahy:

Q. Doctor, in writing this letter to Dr. Hammerly, which I have just read, did you or did you not state truthfully and accurately what information you had with reference to the matters and things about which you wrote?

A. Surely I did.

Q. Have you any independent recollection now of the occasion for writing those facts?

A. My recollection is that in this letter of Dr. Hammerly he asked for information about Group Health Association, and I have a more or less distinct recollection to the effect that he was contemplating possible connection with that organization, and I simply stated to him the facts as I knew them, as I believed I knew them, and I offered him no suggestion whatever, other than to state the facts as I believed I had them.

I wrote Gov. Ex. 149 to Dr. Holman Taylor on November 9, 1938.

Defense counsel read Gov. Ex. 149 to the jury as follows:

"I am very greatly obliged to you for your kindness in sending me a copy of your letter addressed to Dr. Walter A. Coole, Secretary of the Harris County Medical Society, and a copy of the letter addressed to you by Mr. C. T. Freeman. I do not have available a copy of the constitu-

tion and by-laws of the Harris County Medical Society, but, generally speaking, there is a provision in the constitution and by-laws of many component county medical societies that membership in these societies shall be limited to local registered reputable physicians who reside and practice within the counties immediately concerned.

"It is my understanding that the gentleman referred to in the correspondence which you sent me is not engaged in practice in Harris County, but that he is actually engaged in the service of a corporation in a jurisdiction entirely outside of the State of Texas.

"The by-laws of the American Medical Association specifically provide that—

"'A member of a constituent association who removes to and engages in the practice of medicine at a location in another state in which there is a constituent association shall forfeit his membership in this Association and the secretary shall remove his name from the roster of the members of the American Medical Association unless within one year after such change of residence he becomes a member of the constituent association in the state to which he has moved.'

"With most cordial good wishes, I am"——

By Mr. Leahy:

Q. Doctor, have you any independent recollection of the occasion for writing the letter which I have just read?

A. Well, apparently I had received from Dr. Holman Taylor a copy of a letter which he had addressed to Dr. Coole, Secretary of the Harris County Medical Society, and a copy of a letter addressed to Dr. Taylor by Mr. C. T. Freeman, and this letter was written in reply to those communications, in so far as it applies; and it does apply.

Q. Do you recall now whether or not the letters to which this was a reply called for information or something of that character?

A. I think they must have done so, since I quote the by-laws of the Association with respect to membership in a constituent association after a certain period of time, as it relates to membership in the American Medical Association.

Q. Doctor, can you tell us now whether or not your connection with or relation to Group Health Association is

pretty well indicated by these letters which we have just asked you about?

A. I am not sure that I understand your question.

Q. Can you recall now whether or not you performed any other acts or did anything else concerning Group Health Association other than what has already been brought to your attention?

A. No; I cannot, other than as I have testified on this stand.

Q. I mean, in general, from reading all of these letters. If you can, would you kindly indicate anything which may have escaped my attention in trying to refresh your recollection? If there was any act done or statement made to anyone on any occasion with reference to G. H. A., if you can recall it, will you kindly state it?

A. All I can say in reply to that question, Mr. Leahy, as I have already stated, is that what I did was concerned with the collection of facts for the purpose of publishing the facts, and of course these letters speak for themselves.

I never combined or conspired with anyone for the purpose of restraining trade in the District of Columbia. I never conspired for the purpose of restraining Group Health in its business of arranging for the provision of medical care and hospitalization to its members and their dependents on a risk-sharing prepayment basis. I never conspired for the purpose of restraining the members of Group Health in obtaining, by cooperative efforts, adequate medical care for themselves and their dependents from doctors engaged in group medical practice on a prepayment basis. I never conspired for the purpose of restraining the doctors serving on the medical staff of Group Health in the pursuit of their callings. I never conspired for the purpose of restraining doctors (not on the medical staff of Group Health) practicing in the District of Columbia, including the doctors so practicing who are made defendants herein, in the pursuit of their calling. I never conspired for the purpose of restraining the Washington hospitals in the business of operating such hospitals. I had no information as to what was being done with regard to the Washington hospitals during the period from January 1, 1937, to December 20, 1938.

Q. You will recall that on yesterday afternoon, in looking at the abstract of the minutes of the meeting of November

6 in Chicago (Gov. Ex. 117), you stated that the abstract did not correctly quote you as to what in accordance with your best recollection you stated with regard to a question put to you therein by Dr. Hooe to the effect——

"Do you not think it is reasonable for the Washington hospitals to agree with the opinion which Dr. Hooe then expressed"——

• • • • • • •

Q. Do you recall to what I refer, Doctor?

A. Yes, sir.

Q. Did you or did you not, when that statement was made, have any reference to agreeing with Dr. Hooe or Dr. McGovern or anybody else in that conference to restrain Washington hospitals?

A. Never in the world. I think even that statement that is attributed to me indicates that I clearly felt that the hospitals had the right and the duty to choose their own staffs.

Q. I want to ask you, Doctor, whether under these rules—and these rules refer to the principles of medical ethics of the American Medical Association—so interpreted, that is, as interpreted and applied by the American Medical Association and its affiliated and constituent and component societies, that the defendant American Medical Association and its affiliated constituent and component societies can and frequently do condemn as unethical group medical practice on a risk-sharing prepayment basis principally because such practice is in business competition with and threatens the income of doctors engaged in practice on a fee-for-service basis, and particularly doctors so practicing who are members of the defendant American Medical Association and its affiliated constituent and component societies.

A. I deny that statement absolutely. There is no such purpose in the mind of the American Medical Association.

Q. Doctor, in the declaration or interpretation of Principles of Medical Ethics by the American Medical Association and its affiliated constituent and component societies does it, in that interpretation, take into consideration that risk-sharing prepayment group medical practice threatens the income of doctors engaged in practice on a fee-for-service basis?

A. Well, I think it is true that in some instances they have threatened the income, but that is not the purpose of

the American Medical Association in opposing such plans as it has opposed.

Q. Is the opposition of the American Medical Association to schemes of group practice, prepayment or otherwise, based upon any competition in dollars and cents between the members of the American Medical Association and those groups?

A. If it is, I have never heard of it, sir.

Q. What is the basis of the opposition of the American Medical Association to those group plans?

A. The basis of the opposition of the American Medical Association to such schemes as it has opposed has been due in practically all instances to the unsoundness of the plan——

The Court said that had been gone into yesterday and counsel said he did not want to repeat.

Q. Could you tell us, please, to clear up a point that seems to be a bit obscure in our minds just how are the principles of ethics of the American Medical Association controlling, if they are, on constituent or component societies?

A. I think it is true, Mr. Leahy, that every constituent state and territorial association, with one exception, has fully adopted the principles of medical ethics of the American Medical Association as the principles of medical ethics of its own, and I think it is true that in practically every instance component county societies of the constituent associations have likewise adopted the principles of medical ethics of the American Medical Association.

Q. Will you tell us whether such adoption is voluntary or obligatory?

A. So far as I know, sir, it is voluntary. There is one state association that has its own code of ethics. However, it is quite similar to the principles of medical ethics of the American Medical Association. I have recently been informed by one of its most active members who has occupied an official position, that it also observes the principles of medical ethics of the American Medical Association. That is the Medical Society of the State of New York, so that you may know definitely what it is.

Q. Doctor, do you consider that the principles of medical ethics are reasonable regulations of professional conduct in the practice of medicine?

A. I consider them to be so, yes."

Cross-examination.

By Mr. Kelleher:

Gov. Ex. 658 is a copy of a section of the minutes of the Board of Trustees meeting for September 15-17, 1938.

Gov. Ex. 658 was offered in evidence. Defendants objected on the ground that these minutes were incompetent, immaterial and irrelevant, and were not admissible as no conspiracy involving the AMA has been proven. Objection overruled and exception noted. Gov. Ex. 658 was received in evidence and read to the jury as follows:

"Representatives of the Medical Society of the District of Columbia. The representatives of the Medical Society of the District of Columbia came before the Board and presented information relative to the situation in Washington. No action was taken."

I presume that the reference to "the situation in Washington, D. C." was to Group Health. I presented the facts concerning Group Health to the Secretaries and Editors Conference in a very general way. Dr. Fishbein attends if he is in Chicago.

Q. Do you recall that a stenographic report of the meeting of the Secretaries' Conference in 1937 was kept?

A. I think there was a stenographic statement of the Conference.

Q. Now, Dr. West, as I understand your testimony, it is that the principles of medical ethics, a copy of which I have in my hand, have been adopted by every state society in the country except one, is binding upon the society and its members?

A. I think I said that is true.

Q. And I believe you also testified that every constituent society or component society rather, has done likewise?

A. I think that is true; practically all of them.

Q. And isn't it true also that every member of the American Medical Association is bound by these principles of ethics?

A. Yes, supposed to be.

Q. And isn't it also true that any member and every member of the American Medical Association, and the American Medical Association expects that the component

or constituent societies will discipline members of the American Medical Association who violate these principles of ethics?

A. It is expected that they do so if they think it is justified.

Q. But if there is a violation of the principles of ethics, medical ethics, the American Medical Association expects its constituent or component societies to institute disciplinary proceedings for such violation, does it not?

A. It expects the component state and county societies to do what ought to be done.

Q. But isn't it true that the American Medical Association expects the local societies to enforce these principles of medical ethics?

A. It is so provided in the constitution and by-laws of the societies themselves, to a certain degree at least.

Q. And doesn't the American Medical Association expect the societies to do that?

A. The American Medical Association brings no compulsion——

Q. I am not asking you that: I am asking you whether the American Medical Association doesn't expect its societies, component and constituents, to enforce the principles of medical ethics.

A. In so far as they should be enforced I should say so, yes, in a way.

Q. I think it is true, is it not, that whenever you offered any advice in these letters which you wrote, and which Mr. Leahy went over with you this morning and yesterday, you wrote consistently with the policy of the American Medical Association.

A. I wrote consistently with what I understood to be the policy of the American Medical Association, yes.

Q. And the same thing is true as to what you did in relation to Group Health Association?

A. Yes.

Q. Now you testified yesterday that the Judicial Council of the American Medical Association had jurisdiction only to pass upon matters of law and procedure, is that true?

A. In appeals.

Q. In appeals, yes.

A. Yes.

Q. Isn't it true also that the Judicial Council also has jurisdiction over all matters of ethics?

A. The by-laws, if you will get me a copy—I have a copy if you will permit me to read it. Here it is in the by-laws. Can I read from this copy?

Q. What page are you on? Page 22, I believe, is the section that is relevant.

A. This is Chapter IX of the by-laws, Section 1.

"Duties of Standing Committee or Councils.

"Section 1. The Judicial Council. The judicial power of the Association shall be vested in the Judicial Council, whose decision shall be final. This power shall extend to and include:

"(1) All questions involving fellowship in scientific assembly or the obligations, rights and privileges of fellowship.

"(2) All controversies arising under this constitution and by-laws, and under the principles of medical ethics, to which the American Medical Association is a party; and

"(3) (a) Between two or more recognized constituent associations, (b) between a constituent association and a component society or societies of another constituent association or associations or a member or members of another constituent association or other constituent associations and——"

The Court: Doctor, the question is merely as to the jurisdiction of the Council as to medical ethics. I think he has read that.

Mr. Kelleher: Which is in the second complete paragraph on page 22.

The Witness: There is another section, I presume, that is admissible under your question which says:

"The Judicial Council shall have jurisdiction on all questions of ethics, and in the interpretation of the laws of the organization."

By Mr. Kelleher:

Q. Yes, so that it is true, is it not, that the question of whether any particular act as found to have been done by a local society violates the principles of medical ethics ulti-

mately depends upon the Judicial Council of the American Medical Association?

A. I presume that is true, but I have never known in all my experience any times when any questions have been brought before the Judicial Council—probably one or two exceptions—of the nature or kind implied in your question.

Q. It is true, however, when you say that the Judicial Council passes on legal questions only, that it does pass——

A. On appeals.

Q. Yes, on appeals, that part of the legal question is the question of whether a given state of facts violates the principles of medical ethics of the American Medical Association?

A. Well, I offer it as my opinion that the Judicial Council may find it necessary to hear statements concerning what is involved in an appeal in order that it may determine whether or not the procedure was properly taken.

Q. I want to leave the question of procedure out of it. Suppose, taking the Ross-Loos case, suppose the American Medical Association had found that Doctors Ross and Loos had received a fair hearing by the County Society in California, and the State Society, wouldn't it have then been necessary for the Judicial Council to determine whether the conduct of those doctors, Ross and Loos, violated the principles of medical ethics of the American Medical Association?

A. I think that would depend altogether on the nature of the appeal, the question involved.

Q. I understand. Suppose the appeal was such that it would be possible for the Judicial Council to pass on the question as to whether or not these principles of medical ethics had been violated; wouldn't it do so?

A. If it was required in passing on the appeal to do so, I assume the Council would.

Q. And as a matter of fact in the Baird case, known as the Texas Street Railway case, the Judicial Council thought the conduct of these Texas doctors violated the principle of medical ethics of the American Medical Association and——

Mr. Leahy: I object; the opinion speaks for itself.

The Court: If the opinion is here, let's have it.

Mr. Kelleher: I am not going to read the opinion; I just want to point something out to the witness.

The Court: Is there anything, any evidence in the record concerning that case?

Mr. Kelleher: The opinion is in.

Mr. Leahy: No evidence.

Mr. Kelleher: The opinion, it is in evidence.

The Court: That is what I refer to. You might call his attention to some particular paragraph if you desire.

By Mr. Kelleher:

Q. Isn't it true that the Judicial Council in the decision contained in Exhibit 144, held that the plan of the Texas doctors was contrary to sound public policy and therefore violated the principles of ethics of the American Medical Association?

A. I haven't seen this that I can recall in a long, long time.

Q. Mr. Leahy showed it to you yesterday.

Mr. Leahy: Is that away back in 1932?

The Witness: 1932, yes.

Q. Will you answer my question now, didn't the Judicial Council conclude that the conduct of the Texas doctors involved in this case, the opinion of which is contained in Exhibit 144: Didn't the Judicial Council conclude that the conduct was unethical, because contrary to sound public policy?

Mr. Leahy: I submit it speaks for itself.

Mr. Kelleher: I am cross-examining him on his statement yesterday that the Judicial Council passed only on questions of law and procedure.

Mr. Leahy: It still speaks for itself.

The Court: Yes, it does, but I don't intend to have it all read.

Mr. Leahy: He is asking for an opinion as to what the document holds.

The Court: The question was whether the Council in that case put their decision upon the construction of medical ethics. He can answer that; he has the decision before him.

The Witness: That decision, as I read it, contains a statement to the effect that "the Judicial Council is of the unanimous opinion that this type of contract is unethical on the basis of being contrary to sound public policy".

By Mr. Kelleher:

Q. So in that case, the Judicial Council did pass upon the ethics of these particular doctors.

The Court: That is argumentative.

By Mr. Kelleher:

Q. All right, your Honor. Isn't it true that the Judicial Council is the final authority on the interpretation of the principles of legal medical ethics as pronounced by the House of Delegates? If there has been an appeal from findings and decision of a local society, that is true, isn't it?

A. It is so stated in the by-laws which are read to you.

Q. That is correct.

A. That is what the by-laws say.

Q. So that if, as a matter of fact, the principles of medical ethics, as interpreted by the Judicial Council prohibited, as unethical conduct, group practice on a prepayment basis, isn't it true that the Judicial Council would finally pass upon such matters?

Mr. Leahy: Objected to as argumentative.

The Court: It is quite argumentative.

By Mr. Kelleher:

Q. All right, your Honor, I will come to something more concrete. Yesterday, I believe you testified that there was no general policy of opposition to group practice on the part of A. M. A., is that true?

A. I did.

Q. And group practice doesn't necessarily involve prepayment, does it?

A. No.

Q. There may be a group of doctors associating themselves together to supply medical care on a fee-for-service basis?

A. That is correct, and I understand that there are plans for providing medical service that are not even prepayment plans.

Q. I am now addressing your mind to group practice on a fee-for-service basis.

A. There are a number of such plans.

Q. And so long as the doctors in those plans conform to the principles of medical ethics, of course, the A. M. A. has no policy of opposition toward such plans?

A. The A. M. A.—as I testified yesterday—adopted at Cleveland——

Q. I don't mean to interrupt you, Doctor: I now would like to find out, break down this group practice.

A. I think the matter of professional ethics would be involved, yes.

Q. But so long as the doctors were engaged in group practice on a fee-for-service basis, and so long as those doctors are otherwise ethical, the A. M. A. doesn't oppose such plans?

A. It doesn't oppose them unless they should be convinced by an investigation of the facts that the quality of services rendered is of an unworthy or unsatisfactory nature. That is covered by the rules and principles of ethics.

Q. But so long as the quality of care is adequate, and the doctors are ethical, there is no opposition to group practice on a fee-for-service basis?

A. No.

Q. Isn't it also true that within the last two years medical societies have sponsored prepayment plans which are approved by the American Medical Association?

A. Absolutely, and that is why those principles were adopted at the Cleveland session.

Q. And so long as those plans, those prepayment plans, are sponsored by societies and permit all members of the society to participate, they conform with the standards of the American Medical Association?

A. If they are established after an investigation of the needs for such plans, and if they conform to the ten principles adopted by the House of Delegates for the guidance of such societies, why they are; and there is no objection; they are understood to be experimental.

Q. And those prepayment plans sponsored by the local societies, to which the American Medical Association voices no opposition, do not involve group practice, do they?

A. That would depend on the interpretation of group practice. They do not involve group practice in the general acceptation of the term.

Q. As a matter of fact in those plans every member of the society who so desires may participate?

A. Yes.

Q. I now want to address your mind to group practice on a prepayment basis. I think it is true, is it not, that

the Ross-Loos Clinic in Los Angeles is engaged in group practice on a prepayment basis?

A. It is engaged in operating a medical service plan on a prepayment basis.

Q. But doesn't it involve group practice?

A. That organization was originally engaged in group practice as other physicians have been engaged in group practice, and then they altered their procedure by adopting a plan whereby contracts for medical services were sold.

Q. But I am now trying to address your mind to the relationship of the staff: Is that not group practice?

A. It is group practice in the sense they have a number of physicians who are in the organization.

Q. And they have physicians for the various specialties and general practitioners, isn't that true?

A. I don't know how many specialties are represented; I think they do have some specialists.

Q. And within the common acceptation of the term they are engaged in group practice, are they not?

A. They are engaged in the operation of a medical service plan.

Q. Isn't it group practice?

A. It wouldn't be in the general acceptation as applied to physicians who are not selling contracts.

Q. Is it your testimony that the only thing which is group practice within the general acceptation of the term is practiced by a group on a fee-for-service basis?

A. The general acceptation of group practice is where a group of practicing physicians grouped together for the purpose of improving their own services and do not sell contracts; and those groups who engage in and operate a plan for medical services under contracts are usually called medical service plans.

Q. So that your testimony yesterday that there was no opposition by the American Medical Association to group practice had no reference to plans which involve a group of doctors who sold their services on a contract basis?

A. No, there are such plans as that.

Q. I want to know whether your testimony yesterday that the American Medical Association didn't oppose group practice was addressed to plans of this kind; those plans, involving prepayment, by a group of doctors who contract to supply the services to a group of individuals?

A. I can probably answer your question better by telling you that there are plans, medical service plans—consumer if you prefer—that are in operation today that have been approved and have never been objected to, in so far as I have knowledge, operated by societies in the counties in which they are located; and I can name some of them if you want me to.

Q. I want to know whether your testimony yesterday that the American Medical Association had no policy of opposition to group practice, whether that testimony was intended to apply to plans like the Ross-Loos Clinic, and plans like Group Health.

A. It would depend entirely on whether they came within the principles adopted by the House of Delegates and principles of ethics.

Q. Of course, that is the ultimate criterion. Now, isn't it true that the American Medical Association doesn't believe that plans like the Ross-Loos Clinic, like Group Health Association, do not fall within the principles of medical ethics of the American Medical Association?

A. I don't believe I can safely answer that question for the American Medical Association, in so far as the Ross-Loos is concerned.

Q. I want your testimony as general manager, then.

A. My own opinion is, as I have stated in the letters presented yesterday, that there is danger in such plans, in many of such plans.

Q. And don't you feel that such plans as the Ross-Loos Clinic are unethical because contrary to sound public policy?

A. Mr. Kelleher, I wouldn't say what my opinion about that is today, because I don't know what their procedure is now, but there was a time when I didn't hesitate to say that I thought they were unethical.

Q. About 1936?

A. I can't tell you about that.

Q. But at some time between 1930 and 1941, you did consider it unethical?

A. Yes.

Q. Even though its quality of medical care was good?

A. At that time I didn't believe the quality of medical care which was being furnished was good.

Q. Didn't you believe the quality of medical care was good in 1936, as supplied by the Ross-Loos Clinic?

A. I think; I have no faculty for remembering dates.

Q. Let me see if I can refresh you.

A. I think there was a letter in which I expressed the opinion on the basis of information then before me that the services rendered by that particular group was good service.

Q. That was in your correspondence with Dr. Freiberg?

Mr. Leahy: What exhibit is that?

Mr. Kelleher: 141, addressed to Dr. Freiberg.

"I am informed that Doctors Ross and Loos are thoroughly competent physicians and that they have associated with them young men who are well qualified. I have heard from various sources that the Ross-Loos Clinic actually delivers good medical service."

You wrote that letter?

A. Yes, and I stand squarely behind it.

Q. And that was on February 6, 1936?

A. Yes, that was the information that I had at that time.

Q. And at that time didn't you still consider it was nevertheless unethical because contrary to sound public policy?

A. I don't think I expressed any opinion as to the ethics of the thing since that time. If I knew what the Ross Loos people were doing; how they were operating at this time I could tell you——

Q. I am talking about 1936. Didn't you at that time advise Dr. Freiberg that you considered that the Ross-Loos Clinic was unethical, as being opposed to sound public policy?

Mr. Leahy: I object, if it is the letter show him the letter.

Mr. Lewin: He has the letter.

The Court: Point out the part to him.

The Witness: There isn't a word in that paragraph about the Ross-Loos Clinic, sir, that I can see.

By Mr. Kelleher:

Q. Isn't there a reference to the Ross-Loos Clinic in the second paragraph?

A. That is not the paragraph you directed my attention to.

Q. All right, read the second paragraph then.

A. I stated in this letter that while I had frequently heard that the clinic mentioned—and somebody has written in there "Ross-Loos".

Q. Whose handwriting is that; isn't that your secretary?

A. Not that I know of.

Q. Well, you were talking about the Ross-Loos Clinic, were you not?

A. I couldn't tell you that unless I had the whole correspondence.

Q. Well, here it is (handing document to the witness).

A. Here is a letter of February 6, 1936, I wrote to Dr. Freiberg. (Gov. Ex. 141.)

Q. In that letter didn't you discuss the Ross-Loos Clinic?

A. Yes, the Ross-Loos Clinic is mentioned.

Q. That was February 6, 1936, and in March, didn't you hear from Dr. Freiberg that a doctor in Cincinnati, Ohio, was considering starting a clinic like the Ross-Loos Clinic, and that the Cincinnati Academy of Medicine had decided that such a plan was unethical.

A. I had some telephone conversations with Dr. Freiberg, and then he came to my office at that time and told me of the nature of the clinic that Dr. Cook was preparing to establish in Cincinnati.

Q. It was a clinic like the Ross-Loos?

A. In part, but we had discussed it at some length.

Q. Do you refer to anything else in this letter; do you say anything about it being different from the Ross-Loos?

A. I had in mind when I wrote to him what he had told me on the telephone.

Q. And that doesn't appear in the letter?

A. There was a mention of the Ross-Loos.

Q. In Exhibit 141, dated February 6, 1936, you make the statement that the doctors in the Ross-Loos Clinic are thoroughly competent; that they have associated with them young men who are well qualified, and that the Ross-Loos Clinic delivers good medical service. You said that, did you not?

The Court: He answered that.

The Witness: That was my understanding at the time.

By Mr. Kelleher:

Q. And then on March 18, 1936, if you had learned from Dr. Freiberg, that the Cincinnati Academy had adopted a resolution that a plan like the Ross-Loos Clinic to be started in Cincinnati was unethical, you wrote him again

on March 18, 1936. (Gov. Ex. 143.) That is the letter you just read, isn't it?

A. Let me see that. Yes, I wrote him again, and I stated —if you will permit me to read it, that I was glad to have the information submitted in his letter.

"I sincerely hope, of course, that the Cincinnati Academy will be able to head off the establishment of all sorts of group schemes of the nature referred to in your letter, because I am quite convinced that these schemes do not operate to the advantage of medicine, or the medical profession, or the public. I do believe that they are opposed to public policy."

That statement was based in part on personal statements made to me by Dr. Freiberg at the time of his visit to my office.

Q. You say in the letter "Clinics of the kind described in your letter".

A. Yes, it was described in that letter.

Q. And didn't he say: "It may be known to you that Dr. Geo. H. Cook has been and is trying to organize a group clinic in Cincinnati on the identical plan of the Ross-Loos?"

A. He said that in the letter, but he told me other things personally.

Q. So that there were other things mentioned which you did not incorporate in your letter?

A. No, nor he didn't say anything about them in his letter.

Q. He didn't mention it in his letter and you didn't in yours?

A. No.

Q. Now, isn't it true that in 1935 the American Medical Association adopted these ten principles——

A. I think it was 1934.

Q. Well, 1934,—to govern prepayment plans?

A. I didn't say to govern; they were principles believed to be useful for the guidance of those societies who wanted to start prepayment plans.

Q. Isn't it also true that the principles that were adopted were to control, govern, all types of experimentation to provide medical care for persons in the low-income group?

A. They were not to control anybody.

Q. Were they designed to govern such plans?

A. They were designed for the guidance of those who wished to start such plan. The American Medical Association has never controlled anything. The state and county societies which have started these plans, sponsored them, have controlled them.

Q. Do you recall a report of the Board of Trustees at the special session of 1935? (Gov. Ex. 606.)

A. I recall that there was a special session; I believe in 1935.

Q. In that report the following appeared, and I am referring to the last paragraph.

A. Let me see it. Yes, the word "govern" is used there, but it is not used in the sense of establishing control by the American Medical Association.

Q. But the idea of the principle as adopted is that any prepayment plan should conform with the ten principles announced as of that date?

A. It was hoped that they would, but I insist that the word "govern" there is not used in the manner of establishing control by the American Medical Association.

Q. But the Board of Trustees has said that these ten principles do govern such experiments?

A. It says that these principles did govern, but it is intended not in the sense in which you imply it.

Q. Now, at least, I think you testified it was the intention of the House of Delegates on the whole that the plans would conform with these principles laid down in 1934.

A. I think it was the intention of the House of Delegates to adopt principles that would be helpful to state and county medical societies or, for that matter, other groups, in drawing plans for providing medical service for the low-income groups.

Q. And it was hoped all plans would conform with these principles?

A. I suppose so, certainly; otherwise they wouldn't establish those principles if they didn't think they would be helpful.

Q. And isn't it also true that the sixth principle—I believe it is—requires that any form of medical service should include within its scope all legally qualified doctors in the locality to be served by the plan?

A. I can't recall that.

Q. It is the eighth; I show you on page 55 (Gov. Ex. 8), and ask you whether that is not the eighth principle?

A. It says "Any form of medical service should include within its scope all legally qualified doctors of medicine in the locality covered by its operation who wish to give service under the conditions established."

Q. Yes, isn't it true that that means that any plan that doesn't permit all doctors of the local society to participate, if they desire to do so, violates the ten principles, one of the ten principles, adopted in 1934? (Gov. Ex. 8.)

A. There was one of those principles that was changed.

Q. That was the one on payment?

A. I don't recall.

Q. But you don't recall No. 8 being changed?

A. I can't recall.

Q. It was No. 6?

A. That is my recollection.

The Court: Your question is directed to a specific principle, No. 8. Put another question.

By Mr. Kelleher:

Q. Address your mind to No. 8, and tell us whether if a plan for providing medical service to low-income groups doesn't permit all members of the local society to participate in it, if they desire to do so, that plan doesn't violate one of the ten principles adopted in 1934?

A. I would have to read this whole business through to answer that question satisfactorily. In my opinion Section 8 of these principles expressed the opinion of the House of Delegates that in the formation of these plans by the Society they should include within their scope all legally qualified doctors of medicine in the locality covered by its operation who wish to give service under the conditions established. Now, I would have to read this carefully to——

Q. Well, you are familiar with it, are you not; you saw it yesterday?

A. Mr. Kelleher, I have lots to do; I can't read these every day; and I would have to establish in my mind whether this was intended to apply to these plans believed necessary, and which were to be operated under the auspices of the Medical Society.

Q. Isn't it a fact that the only plan that the American Medical Association would permit were those plans which conformed with the ten principles adopted at that session in 1934?

A. Mr. Kelleher, there are many plans in operation that the American Medical Association would not approve, but it is not a matter of their permission.

Q. Is it not true that you would not approve any plan which did not conform with these principles?

A. I think not; I think they would not be approved by the American Medical Association, but the American Medical Association doesn't have to approve them.

Q. But wouldn't you oppose any plan if it didn't conform with these principles?

A. I don't know that the American Medical Association would condemn it on the basis of being unethical for that reason; it might on the basis of its being an unsound plan. I can tell you this, though: I don't believe the American Medical Association would approve it if it involved control by a corporation.

Q. I am not asking you that. I would now like to know if the American Medical Association would not oppose any plan to provide medical care to people of low-income on a prepayment basis if such plan didn't permit all of the qualified physicians in the locality to be served to participate in the plan?

A. That is a question which would have to be determined on the basis of actual fact.

Q. You are familiar with the various plans which have been adopted within the past few years?

A. I am familiar with some of them.

Q. Some of those plans, like the Ross-Loos Clinic, do not permit all physicians in the locality served by the plan to participate, do they?

A. I don't think they do.

Q. And therefore, isn't it true, that they do not comply with the general principles adopted in 1934 by the Association? (Gov. Ex. 8)

A. That depends entirely on whether those ten principles are for the guidance of the county and state societies who wanted to organize, alone, or generally.

Q. But you weren't setting up standards for state and county societies which were more rigorous than the standards you applied to organizations not sponsored by such state and county societies, were you?

A. That would depend on the circumstances; I think you might reasonably expect, in some particulars, more of a medical society than of other groups.

Q. Suppose you take a plan which involves group practice: that is a group of doctors who associate themselves together; and suppose that the plan offers medical care to people of low income on a prepayment basis. Does that plan conform to the principles of medical ethics of the American Medical Association, assuming that it is ethical in all other respects?

A. You have a long question there. Ask it again and I will try to answer it. Of course, it presupposes that a person who offers medical service is going to render good medical service. I think I know of men who are not particularly capable but who are quite ethical.

Q. I want you to assume that this group offers the same type of service as does the Ross-Loos Clinic.

A. I would say that if that group was approved by the local county medical society and by the state medical association, the American Medical Association would not offer any opposition whatsoever.

Q. Suppose, though, that the local medical society and the state medical society neither approved or disapproved?

Mr. Leahy. What do you want to know?

Mr. Kelleher. I want the answer to my question.

Mr. Lewin. The question is perfectly clear.

The Witness. It is not very clear to me.

Mr. Leahy. I don't know what it is.

By Mr. Kelleher:

Q. I will ask it again. Suppose that a group of doctors offer medical care to low-income groups on a prepayment basis; suppose that the group is ethical in all other respects; suppose the doctors are qualified, and that the medical care offered is the same offered by the Ross-Loos Clinic, and suppose that the local medical society and the state medical society neither approve or disapprove of that plan. Is such a plan ethical?

Mr. Leahy. Objected to as immaterial; a hypothetical question without any hypothesis in the evidence.

The Court. You opened it up; you asked him about his opinion about the principles of ethics of the American Medical Association. Overruled.

Mr. Leahy: Exception, your Honor.

The Witness: I think no objection would be offered to it if it were not otherwise in conflict with the constitution,

by-laws, ethics and traditions of the American Medical Association.

Q. And such a plan would not be unethical, would it, because it didn't permit free choice of physicians?

A. Not necesarily, because the hospitals do not offer free choice of physicians in all particulars; neither do other groups.

Q. And if in that plan the choice of the patient was limited to the doctors on the staff of the organization there would be no infraction of that section of the principles of medical ethics that require free choice of physicians?

A. Providing there was nothing else involved, and providing it was not disapproved or approved by the local society and the state society.

Q. Now, let us get to the second matter; if the local society disapproves of that plan solely because it involves prepayment by a group of doctors, the American Medical Association would oppose the plan, would it not?

A. Not, if I understand your question correctly; the answer is "No", but I am not sure I understand it.

Q. I will try to clarify it. If the medical society, local society, disapproved of the plan which I have described, and disapproved for the sole reason the plan involved group practice on a prepayment basis, the American Medical Association would also disapprove of it, would it not?

A. The American Medical Association would not take any action unless it was officially brought to its attention, and action on the part of the American Medical Association requested.

Q. Suppose it were officially brought to its attention?

A. There was more to my answer. It was officially brought to the attention and action was requested.

Q. Let us suppose it were officially brought to its attention and action requested.

A. It would be referred to the Judicial Council.

Q. Would not the American Medical Association oppose such a plan for that reason?

A. For what reason?

Q. Because the local society disapproved of the plan.

A. Not necessarily, Mr. Kelleher. The American Medical Association might take no action whatever.

Q. Even if invited in?

A. It might not make any decision in the case that would involve official action.

Q. As a matter of fact, the American Medical Association was invited in, in connection with G. H. A., was it not?

A. The American Medical Association undertook to develop the facts about G. H. A. before it was ever invited to do anything; and G. H. A., if I may say so, is not at all——

Q. Please confine yourself to my question, if you do not mind, Dr. West. The American Medical Association was asked to come into the G. H. A. matter, was it not?

A. The American Medical Association was requested by the District of Columbia Medical Society, through its representatives as a committee, to interest itself in this matter long after it had already interested itself in it.

Q. Is it not also true that Dr. Verbrycke wrote Dr. Woodward and asked the American Medical Association to become interested in the matter?

A. He asked the Bureau of Legal Medicine and Legislation, I believe.

Q. And as a result of that it was decided that Dr. Woodward should go to Washington, was it not?

A. I do not know, to my own knowledge. I cannot answer that definitely, but maybe so.

Q. Did you hear Dr. Woodward's testimony?

A. I have heard lots of testimony. I cannot remember it all.

Q. Do you not recall that he testified that after conferring with you it was decided that he should go to Washington?

A. If he did, that was actually so.

Q. Is it not also true that you were interested in Group Health Association before the Medical Society of the District of Columbia became interested?

A. I think that is true, but I cannot produce any documentary evidence on that.

Q. You think it is true?

A. I think it is true, and I said so, and I believe it.

Q. Whatever you were doing in connection with Group Health Association, you were doing to oppose Group Health Association, were you not?

A. I was doing it to develop the facts.

Q. Yes; but were you not developing the facts and doing everything else——

A. Mr. Kelleher——

Q. Let me finish my question—for the purpose of opposing Group Health Association?

A. It has long been the policy of the organized medical profession of the United States to oppose corporation practice, and this association happened to be a corporation engaged in the practice of medicine.

Q. And therefore, as a matter of fact, you were opposed to it?

A. Personally, I certainly was.

Q. Was not the American Medical Association opposed to it?

A. I think that it is contrary to the policy of the American Medical Association for a corporation to enter into the practice of medicine.

Q. And therefore the American Medical Association and you were opposed to Group Health Association?

A. We were opposed to any corporation engaging in the practice of medicine.

Q. Were you opposed to Group Health Association?

A. When we found out what the facts were, I was.

Q. Was not the American Medical Association opposed to it?

A. I think it was entirely contrary to the policies of the American Medical Association.

Q. And to the policies of the House of Delegates?

A. Yes, sir; I think so.

Q. And whatever you did in connection with G. H. A. you did to oppose the growth of Group Health Association, did you not?

A. I don't know about opposing the growth. I opposed the principle of the Group Health Association.

Q. And did you not desire to put a stop to its operation if you could?

A. I didn't do anything to stop it, but I did make my position known, and I expressed my opinion to the effect that it was a corporation practicing medicine and believed to be illegal, and I opposed it on that account.

Q. Is it not also true that you and the American Medical Association did everything you could to combat G. H. A.?

A. Yes, to combat it in the sense that we did everything we could to develop the facts and make them known. Now, Mr. Kelleher, I never had one word of conversation with anybody in G. H. A. that I know of.

Q. I am not suggesting that at all.

A. I think it is fair for me to say that if I had been going to actively oppose the actual organization of the thing I would have gone to them and opposed it.

Q. How would you have done that?

A. By doing everything I could to persuade them that they were doing the wrong thing.

Q. But there were other ways of opposing it.

A. Yes; and there were other ways to make the attitude of the American Medical Association known.

Q. And it is also true that there were ways of affecting Group Health Association's growth through the local hospitals; is not that a fact?

A. So far as I know, the American Medical Association never attempted to control the action of any hospital with respect to Group Health Association.

Q. Is not this true——

A. (Continuing) I never communicated with a Washington hospital in my life, so far as I know.

Q. In the minutes of the board of trustees of November 18 and 19, 1937 (Gov. Ex. 136), appears the following (reading):

"Dr. West reported that a committee of the Medical Society of the District of Columbia had visited the headquarters offices early in the month for the purpose of conferring with him, Dr. Woodward and Dr. Leland with respect to the Group Health Association, Inc.; that he had brought what apparently amounted to a demand to the Association to devise further means and ways of opposing the continued operation of Group Health Association, Inc., and that it was intimated that the American Medical Association had not concerned itself with anything but scientific matters, in spite of the fact that he and Dr. Woodward had conferred with the District Society in Washington on instructions from the board."

Is it true that in connection with G. H. A. you conferred with the District Society in Washington on instructions from the Board of Trustees of the American Medical Association?

A. I do not recall that I ever attended a meeting of the District Society during all the life of the Group Health Association.

Q. Did you confer with representatives of the Society on instructions from the Board of Trustees?

A. No. I think Dr. Woodward and Dr. Leland conferred on instructions from the Board of Trustees.

Q. Did you not say that you and Dr. Woodward did confer with the District Society on instructions from the Board of Trustees?

A. I don't recall the Board of Trustees giving Dr. Woodward and me any instructions to confer.

Q. Would you say this is wrong?

A. Well, I don't know. I am not going to say it is wrong, but I do say that I don't recall it myself, that specific instructions were issued to Dr. Woodward and me at any one time.

Q. You came here in July, 1937, for the very purpose of consulting the representatives of the Society concerning G. H. A., did you not?

A. I came for that purpose among others, Mr. Kelleher.

Q. If you were ordered by the——

A. As a matter of fact, if you will permit me to answer that question, my recollection is that—and I am not absolutely sure about it—that I was invited to confer with them after I got here. I can't be sure about that, but that is my recollection.

Q. If you said in November, 1937, that you had gone to Washington as a result of instructions from the Board of Trustees, don't you think that was correct?

A. I would have to see the preceding minutes of the Board of Trustees to know if I had had instructions.

Q. You saw them this morning. Do you not recall that you were shown——

A. My dear man, I saw an extract from the minutes this morning, a digest of the minutes. I didn't see all the minutes.

Q. I think you have told us that you and the American Medical Association were opposed to G. H. A., did you not?

A. I said I was opposed to the principle of the thing, and I thought it was not in keeping with the policies of the American Medical Association.

The Court: You have been all over that.

Mr. Kelleher: I was just leading up to something else, your Honor.

By Mr. Kelleher:

Q. Is it not true that the American Medical Association was opposed to G. H. A. because, in its view, G. H. A. was unethical?

A. Mr. Kelleher, I have already stated that the American Medical Association was opposed to G. H. A. because it was a corporation engaged in the practice of medicine, and it was believed to be illegal and it had been so decided in many instances.

Q. And was it not opposed, therefore, because it was unethical for a doctor to associate himself with that association?

A. I will give you my personal opinion. I think it would be unethical for a physician to engage himself with an illegal corporation of any kind.

Q. And you felt that way in 1937?

A. I felt that way all my life.

Q. And you felt that way in 1937 concerning Group Health?

A. I feel that way today.

Q. And you felt that way in 1937?

A. All my life.

Q. Did you not know that if the local society had the same view that you had, that G. H. A. was unethical, that a doctor, a member of the Society, associating himself with G. H. A. would be subject to disciplinary proceedings by the local society?

A. If that local society wanted to institute proceedings, yes. But, Mr. Kelleher, I must insist—and I hope it is not out of the way for me to do so—that the American Medical Association has no jurisdiction over membership of local societies.

The Court: I thought we had been all over that.

The Witness: And it does not attempt to exercise it.

The Court: We have been over that. Do not pursue it any further. I would rather not get back to that.

Mr. Kelleher: All right, your Honor.

By Mr. Kelleher:

Q. Did you not believe in 1937 that any member of the local society who became associated with Group Health Association would be subject to disciplinary proceedings by the Medical Society of the District of Columbia?

Mr. Richardson: Objected to as repetitious.

Mr. Kelleher: No, it is not.

Mr. Richardson: Word for word.

The Court: He has answered the question. Put another question. Objection sustained.

By Mr. Kelleher:

Q. On October 29 you wrote the local society notifying them that Doctors Lee and Scandiffio were on the staff of G. H. A., did you not?

A. I don't know whether it was October 29 or not. I wrote them and told them that I had that information.

Q. You learned that from Mr. Hayes, did you not?

A. My recollection is that either I or somebody at our office received a telegram from Mr. Hayes giving the names of those who had been announced as members of the staff of G. H. A.

Q. And on the same day you wrote a letter (Gov. Ex. 114) to the Society notifying the Society that two of its members were on the staff of G. H. A., did you not?

A. I don't know whether it was the same day or not. I do remember writing a letter in which I stated that two members of the staff were members of the District of Columbia Society, and that one, I believe, was a member and Fellow of the American Medical Association.

Q. And a few days later, at the November 6 conference, you learned that the Society had instituted disciplinary proceedings against Doctors Lee and Scandiffio?

A. I learned—I don't know whether it was a few days later or not, but some time later I learned through a newspaper statement.

Q. Did you not hear about it at this November 6 conference, through Dr. Hooe?

A. I believe it was mentioned; yes.

Q. Dr. Hooe explained that two members had been cited by the C. C. and I. M. committee; do you recall that?

A. I think I probably had information before that conference.

Q. You had heard it before that?

A. I do not know about its being a few days after I wrote that letter.

Q. Were you surprised to hear that these two doctors about whom you had written on October 29 were now cited by the C. C. and I. M. committee?

Mr. Leahy: I object as immaterial, if your Honor please, whether he was surprised or not.

The Court: Objection sustained.

By Mr. Kelleher:

Q. Did you not expect, when you notified the Society on October 29 that two of its members were on the staff of G. H. A., that that Society would institute proceedings against those two doctors?

A. Mr. Kelleher, I didn't notify the Society. I informed the Society that that was the information I had.

Q. And when you so informed the Society did you not believe then that proceedings would be instituted by that society?

A. I didn't think about whether they would be or not. If you are trying to make the implication that I wrote that letter for the purpose of inciting action by the Society, you are altogether wrong.

Q. Why did you give the Society that information?

A. Just as a matter of interest.

Q. Purely casually?

A. If I were to get a telegram announcing that certain doctors had been appointed on any commission by the United States Government, as a matter of interest I would look to see if they were members of the American Medical Association or not.

Q. All right. As a matter of fact, Dr. Scandiffio was expelled from the Society, was he not?

A. So I am informed.

Q. Did you not also, in response to a request from the Harris County Society, advise that Society that in your opinion if any member of that Society were associated with Group Health Association that was unethical conduct?

A. I don't know whether I wrote such a thing or not. If you have a letter there I should be glad to look at it.

Mr. Lewin: It was shown the witness this morning.

The Court: I will give the jury a few minutes recess while you are finding it.

(A brief informal recess was taken, at the conclusion of which the following proceedings took place:)

By Mr. Kelleher:

Q. Doctor West, did not Dr. Talley write you and ask you what the view of the National Association was concerning

the ethics of any member of the Association affiliating himself with G. H. A.?

A. Dr. Talley—who is he?

Q. Chairman of the Board of Censors of the Harris County Medical Society.

A. Here is a letter from him, yes, in which he says:

"We would appreciate a letter from you stating the view held by the National Association with reference to practice of this type."

Q. And he was referring to Group Health Association, was he not?

The Court: What exhibit is that?

Mr. Kelleher: No. 124, your Honor.

A. Yes. He says, "so-called Group Health Association made up of Federal employees of the H.O.L.C. located in Washington, D. C."

By Mr. Kelleher:

Q. Did you not reply that that organization constituted a violation of the principles of medical ethics?

A. I will have to read this letter to find out.

Q. Let me help you on it.

The Court: What letter is that?

Mr. Kelleher: No. 123, your Honor.

By Mr. Kelleher:

Q. Read the last two sentences in the third paragraph.

A. (Reading:)

"Based on the information available to us here, it is my purely personal opinion that a physician who becomes an agent of a corporation engaged in the practice of medicine violates the principles of medical ethics. This, my personal opinion, is offered of course for whatever you may consider it to be worth."

Q. Your opinion, then, as of February, 1938, was that if any doctor affiliated with Group Health Association, he violated the principles of medical ethics?

A. I think if——

Q. Just a second, Doctor West. Please answer my question. I want to be perfectly fair to you.

Mr. Lewin: Let him answer it yes or no and then give his explanation.

Mr. Leahy: Put the question again, if you want yes or no.

The Court: You gentlemen settle it among yourselves.

Mr. Kelleher: Will you read my question, please?

(The pending question was read by the reporter as above recorded.)

By Mr. Kelleher:

Q. What is the answer to that question?

A. My answer is that I think any doctor who sells his services to a corporation engaged in the practice of medicine violates medical ethics.

Q. Then is your answer in the affirmative?

A. As particularly applied to Group Health Association?

Q. Yes.

A. Yes.

Mr. Kelleher: I have no further questions.

Redirect examination:

Q. Doctor, with reference to the Dr. Cooke letter about which you were asked, with reference to the Cincinnati group, did you receive information from Dr. Cooke personally?

A. No, sir; not that I recall.

Q. Did you receive information from anybody with reference to the Dr. Cooke clinic?

A. I had a visit, and my recollection is that I had at least two telephone calls from Dr. Frieburg who later wrote me. I believe perhaps one of those calls was in between the two letters that he wrote me, in which he gave me some information that was not contained in the letters, which, in my opinion, indicated that the proposed plan was not——

* * * * * * *

The Witness: I did; through a visit from Dr. Frieburg and through, I think, two telephone messages, and I have an indistinct recollection that someone else wrote to me about it or talked to me about it; but that I cannot testify to definitely.

Q. From information of that character received with reference to it, was there a distinction between the Ross-Loos Clinic and the Dr. Cooke clinic as proposed?

A. My recollection is that the plan proposed to be put into operation in Cincinnati went considerably beyond most plans, and I do distinctly recall that I was informed that it would involve solicitation of patients and advertising, open advertising.

Q. Now, with reference to one question and answer—and I am not clear about it—you made the statement that you had been opposed all your life to a doctor's being connected with an illegal enterprise. Do you recall that testimony?

A. I said that I had been opposed all my life, certainly all my medical life, to a doctor selling his services to a corporation engaged in the practice of medicine. I stick to that statement.

Q. With reference to the G. H. A., somewhere in your answer you said something which appeared to be confusing, as to whether you had been opposed to G. H. A. or whether you were opposed to a doctor engaging himself in an enterprise which was thought to be illegal.

A. I was opposed to G. H. A. as a corporation just as I was opposed to any other corporation engaging in the practice of medicine.

Recross-examination:

Q. Were you not opposed to the Ross-Loos Clinic because it was a partnership?

A. No.

Q. You were not?

A. No.

Q. Let me read you this and ask you whether this is correct. It is from Exhibit 141 (reading):

"I am sorry indeed to know that anybody in Cincinnati is preparing to begin operations of a plan made more or less famous, or infamous, according to the point of view, by Doctors Ross and Loos in Los Angeles. I am quite convinced that the Ross-Loos scheme is a violation of the principles laid down by the courts of California which have repeatedly insisted that the corporate practice of medicine is illegal in that state. I am just as strongly convinced that it is relatively easy to evade the law. What is in effect a cor-

poration may be organized under the designation of partnership."

Is that correct?

* * * * * * *

The Witness: That is correct, because at that particular time I had the understanding that it was a corporation. Now, then, the other part of your question there—if you will be good enough to re-st. te it I will try to answer it.

The Court: The question is whether, if it changed its form to partnership, you would still be opposed to it if it carried on the same way.

The Witness: My view with respect to it, based on the fact that a corporation that had been engaged in the practice of medicine in Illinois had lately been declared to be illegal and immediately got around that court decision by organizing as a partnership——

By Mr. Kelleher:

Q. Will you answer the court's question, please?

The Court: It was not my question.

Mr. Kelleher: Your suggestion, I mean. Will you read it, Mr. Reporter?

(The question referred to was read by the reporter as above recorded.)

The Witness: Not necessarily; no.

By Mr. Kelleher:

Q. Were you opposed to the Ross-Loos Clinic even if it was a partnership?

A. I was at that particular time, when I was informed that it was a corporation.

Q. Does this say you were informed it was a corporation?

A. No; it does not. I cannot put into every letter I write everything I know and all the information I have.

Q. Did you not put into that letter that although the Ross-Loos Clinic was a partnership, you felt it was evading the law?

A. That is not what I said.

Q. Look at that letter and tell us whether there is anything to show that you thought that the Ross-Loos Clinic was a corporation.

A. I said, "I am just as strongly convinced that it is relatively easy to evade the law. What is in effect a corporation may be disguised under the designation of a partnership."

Q. And did you not view the Ross-Loos Clinic as a partnership, but, nevertheless, say it was illegal?

A. No; I didn't think it was illegal as a partnership, because I know of corporations that have been declared illegal and that have established themselves as partnerships and are not declared illegal.

Q. Did you not say, "I am quite convinced that the Ross-Loos Clinic is in violation of the principles laid down by the courts of California"?

A. I objected because I thought it was a corporation. I explained that three times.

Q. You have explained it three times?

A. Yes.

Q. Even though it was a partnership?

A. I don't know what you mean by "even though it was a partnership."

DR. MORRIS FISHBEIN, a defendant and witness for the defendants.

Direct examination.

By Mr. Leahy:

I have resided in Chicago since 1906. I am editor of the Journal of the AMA and managing editor of all its publications. I have a degree of Doctor of Medicine from Rush College of the University of Chicago, conferred in 1912. I was born in 1889. I received the alumni fellowship in pathology from Rush Medical College and was appointed resident physician in the Durand Hospital of the McCormick institution for infectious diseases. I was assistant coroner's physician of Cook County, making post mortem examinations, 1912-1913. I was assistant in the out patient department of the Central Free Dispensary in Chicago for a year. In 1913 I became assistant to the editor of the Journal of the AMA and was appointed editor in 1924. I have been with the AMA for 27 years.

As editor of the Journal I have charge of all material furnished, including the scientific contributions, editorials,

news material, abstract of scientific literature, answers to questions. I take the responsibility for it and am responsible to the Board of Trustees. The Journal is a weekly publication with a circulation of 101,300 subscribers, mostly physicians, although at least 4,000 copies go to libraries, medical schools, institutions of research, and similar places. I have written and published 18 books, some medical and some general advice books; some scientific expositions, some exposures of quackery, and several hundred articles, of which six or seven dealt wholly with scientific research and exposition. I am a member of the American Medical Association for the Advancement of Science, a fellow of the American Public Health Association, a member of the American Medical Historical Association, a fellow of the AMA, a member of the Chicago Pathological Society, of the Chicago Society of Medical History, and many other organizations, including the Committee on Medical Preparedness of the AMA; the Executive Committee of the Federation of Medical Sciences of the National Research Council, and am chairman of the Committee on Education of the National Research Council.

The Journal receives for publication each year 3000 articles that discuss every phase of scientific medicine, including surgery, diseases of the skin and of the nervous system and practically every other disease which may occur to man and sometimes, to animals. We select therefrom approximately 600 as acceptable for publication. Very frequently controversial questions are presented and published from many different points of view, as physicians might vary as to techniques, so we natuarlly present the various techniques. I understood that Dr. Cabot stated that in so far as the scientific aspects of the Journal were concerned he considered it probably the best in the world. When Dr. Cabot made the statement that some of the articles of the Journal could be torn limb from limb he was referring, I am sure, to specific articles not dealing with the scientific aspects of medical science.

I began to hear vague rumblings concerning something that later turned out to be Group Health fairly early in 1937. Of course, if I started now to go all the way back I would say that I heard the antecedents of Group Health discussed at least twelve years ago by Mr. Filene. I have no definite memory as to exactly when I heard about Group Health. Someone must have said to me early in 1937, "Some

one is figuring on starting another plan in Washington." I attended the AMA convention in June 1937 at Atlantic City and I am quite sure I heard something about Group Health. I left the United States in the middle of July of that year and did not return until the first of September. I met Mr. Filene on the boat and he mentioned the matter at that time. With the exception of this I did not hear any mention of Group Health from July 12 to the first of September.

During the period from the AMA convention to July 12 I heard about Group Health at a meeting of the Executive Committee of the Board of Trustees on June 29. I believe that about that time, at that meeting, there was some discussion of Group Health, and the suggestion was made that an article be published in the Journal giving available facts concerning the organization. Before leaving on July 12 I personally did not do anything whatsoever concerning Group Health, and didn't even discuss it with anyone. I never interviewed anyone in the Medical Society about it and I had no correspondence with anybody in the Society. I never went to any committee of the District Medical Society for discussion on any subject or anything relating to Group Health. As editor of the Journal I have no authority in the administration of any of the bureaus or councils of the AMA. I make no attempt to administer any of the bureaus. Before going to Europe I had no conversation with Dr. Cutter or Dr. Leland concerning Group Health, and with the exception of the Executive Committee meeting none with Dr. West. I have never formulated any plans whatsoever about Group Health. An article pertaining to Group Health came to my desk with a memorandum from Dr. Woodward. I indicated on the memorandum certain changes which I thought desirable and probably returned the article to Dr. Woodward, and beyond that I had nothing whatever to do with the article itself. I have met Dr. Christie, Dr. Groover, Dr. Neill, and I corresponded with Dr. Yater, but I have had no conversation nor correspondence with any of these doctors relating to Group Health. I have not met and know nothing of Dr. Hooe, Dr. Martel, Dr. Mattingly, Dr. McGovern, Dr. Reade, Dr. Sprigg, Dr. Stanton, Dr. Warfield, Dr. Prentiss Willson, or Dr. Young. On November 6 when Drs. Woodward, Leland, and West met with Drs. McGovern and Hooe in Chicago, I was in New Orleans.

Upon my return in September, 1937, and aside from the publication of the Journal article the following is all I had to do with reference to Group Health; I sat with the Board of Trustees at the September meeting previously to the publication of the article; I was present at the meeting of the State Secretaries and Editors; I was probably also present at the meeting of the Board of Trustees in November, 1937. I have a dim recollection that at the meeting of the State Secretaries and Editors there was an exposition of the development of Group Health, and the general character of the matter was discussed. I believe an attempt was made to introduce and pass a resolution, but that body has no authority to pass any resolutions that are binding in any way on anybody. That is purely a conference where men discuss affairs, and they can take no action.

I have no official position on the Board of Trustees, but as editor, and being responsible for all the publications and taking orders from the Board of Trustees as to material that is to be disseminated, I sit with the Board at its meetings.

In addition to the Journal, I edit Hygeia; the quarterly cumulative index medica, an index of some 1500 medical periodicals throughout the world; a periodical devoted to nervous and mental diseases, one for pathology; one for the nose, throat, and eye; internal medicine; surgery; and I am also chief editor of War Medicine, which is published in cooperation with the National Research Council and with the cooperation of the Army and Navy and the Public Health Service.

On February 10 at Georgetown University I made a speech, and at that time some questions were asked about Group Health in an open forum and I gave some discussion of group health in general. I think the title of my address was American Medicine. I venture to say that perhaps in one or two other addresses before public forums elsewhere in the county I may have occasionally devoted three or four sentences in my discussion to Group Health as just one type of maybe several hundred, if not thousands, of plans that are now being experimented with in this country.

I have never conferred with any member of the District Medical Society and never had a conference with anybody in the District Society on the question of Group Health. I never attended any meeting of the Medical Society in 1937

and 1938. In responses to the subpoena of the Government I instructed my secretary to locate every letter from my files which could be found which might be even remotely related to Group Health and turn them over to the Government. So far as I know I answered a letter addressed to me from a boy named Fred Hammerly, which didn't discuss Group Health. He then responded and his second letter was referred to Dr. West. That is the only correspondence of which I have any knowledge which might concern Group Health. My letter to Hammerly, dated September 30, 1931, read as follows (Gov. Ex. 283):

"I am referring your letter of September 24 to Dr. Olin West, secretary of the American Medical Association, who is a member of the Judicial Council and who can best advise you regarding the question in which you are interested."

Q. Doctor, you were here in the courtroom, were you not, when Dr. Cabot gave his testimony?

A. Yes, sir.

Q. With reference to that testimony, I want to ask you, Doctor, whether quite a different policy has been established in regard to the section on Medical Economics in the Journal than that which had existed hitherto?

A. No doubt Dr. Cabot meant to infer by that statement, I take it, that we were not as broad in our general admission of discussions relating to so-called medical economic matters as we are in relation to scientific matters. There might be a fair difference of opinion on that point. In fact, if anyone wished to show that, I could produce a list of many hundreds of articles discussing every possible aspect of the distribution of medical service.

Q. Do you edit all of the articles on economic questions and medical economics that appear in the Journal?

A. I am responsible as editor for every article and, in fact, for everything else that appears in the journal of the American Medical Association.

Q. What have you to say with reference to the statement that the articles in the Journal are a pretty incomplete statement with very important omissions therefrom?

A. That, of course, is to my mind absolutely unwarranted, for the simple reason that I have published many, many articles describing every possible technique in the distribution of medical service.

Q. On questions wherein there is any discussion whatsoever with reference to medical economics, do you omit source material so that the busy physician who cannot possibly go to original sources is not able to get a complete picture?

A. Well, if Dr. Cabot meant by that that I did not publish the 27 volumes of the Committee on the Cost of Medical Care—he may perhaps refer to that as source material—obviously we print vast amounts of source material. I might refer, for instance, to an article printed long before Group Health Association appeared on the scene, dealing with various techniques for distribution of service and on different types of payment.

Q. I want to ask you, Doctor, if the Journal of the American Medical Association has adopted any policy whereby the possibility of pointing out omissions and weaknesses in articles published has been frowned upon?

A. I think when Dr. Cabot made that statement he disregarded the fact that I have published on at least five occasions statements made by Dr. Cabot himself, discussing such matters.

Q. Has the Journal of the American Medical Association in its field of discussion of Medical Economics and such subjects and problems been open to both sides for criticism each of the other?

A. We have published on many occasions criticisms by two sides of various techniques for the distribution of medical service. In that connection it is obviously the duty of an editor always, first of all, to protect his reader, so that if an article is received with obvious misstatements of fact it would be a very poor editor who would publish it just because it came from the opposite side.

I wrote Gov. Ex. 291-A to Mr. Hartfield. I wrote Gov. Ex. 281 in reply to a letter from Dr. Erskine.

Defense counsel read Gov. Ex. 291-A and 281 to the jury as follows:

Gov. Ex. 291-A, dated August 27, 1938, is on the official stationery of the Journal of the American Medical Association, addressed to Mr. M. K. Hartfield, Washington, D. C. (reading):

"DEAR MR. HARTFIELD:

I appreciate your letter of August 23, together with the information that it contains. This is most heartening as

indicating the public reaction in Washington toward Group Health Association activities. I am referring your letter to Dr. Olin West, Secretary of the Association, and Dr. R. G. Leland.

With best wishes and with the hope of seeing you sometime soon, I am

Sincerely yours,"

Exhibit 281 is a carbon copy of a letter from Dr. Fishbein dated September 19, 1938, addressed to Dr. Arthur W. Erskine at Cedar Rapids, Iowa, and it reads as follows (reading):

"I have read with great interest your letter of September 9 and also the material sent to you by A. H. Woods. I am sending your letter also to Dr. Olin West, since it is addressed jointly to him. I believe that the action taken by the House of Delegates, which is reported in the Journal of the American Medical Association for September 24, will indicate to you the progress that has been made. I will be much interested in hearing your comment as to the action taken by our House of Delegates.

Very truly yours,"

I am familiar with the Principles of Medical Ethics and lecture on the history of medical ethics in a medical school. The framework of the principles was developed in Manchester, England, and was first published in 1803 after William Heatherton and others had given their opinions. The first draft was modified and adopted by the AMA in 1848. The modified draft being written by Isaac Hayes, then editor of the Journal of the AMA. Since that time there have been modifications of the fundamental principles, primarily with the object of covering new developments, both in scientific and what might be called the general nature of the medical practice. There isn't the slightest scientific or authentic evidence in support of the statement that under the Principles of Medical Ethics, as interpreted by the AMA and its affiliated constituent and component societies, they can and do frequently condemn as unethical group practice on a risk-sharing basis, particularly because such practice is in business competition with and threatens the incomes of doctors engaged in practice on a fee-for-service basis; and particularly, the doctors

so practicing who are members of the AMA and its affiliated societies.

Q. Are the AMA and its affiliated constituent and component societies interpreting the rules of ethics principally because, in so far as the risk-sharing prepayment basis of medical practice is concerned, there is competition from the money angle between fee-for-service practice as compared with group practice?

A. Again, I would say that from long tradition everything that is taught to every medical student in every qualified medical school is absolutely opposed to any such concept of medical practice.

I have never combined and conspired for the purpose of restraining trade in the District of Columbia, or for the purpose of restraining Group Health, or for the purpose of restraining the members of Group Health, or for the purpose of restraining the doctors serving on the medical staff of Group Health, or for the purpose of restraining doctors not on the staff of Group Health; or for the purpose of restraining the Washington hospitals in the business of operating such hospitals. I never did anything, wrote anything, or discussed with anybody, any matter concerning the Washington hospitals in 1937 and 1938. I have never endeavored or tried to restrain anybody from becoming a member of the staff of Group Health, and to my knowledge I don't know anybody who has been or now is on the staff of Group Health. I have done nothing for the purpose of hindering or restraining Group Health, any members of its staff, or anybody connected with Group Health. I have heard it has a clinic on I Street, but I don't even know where I Street is. I have never been there and I have never done anything to restrain them from carrying on this clinic. I published a current comment in the Journal somewhere in December, 1938, covering the hearings which had been held in Congress on the question of the appropriation, that is, Congressman Woodrum's hearing.

Cross-examination.

By Mr. Lewin:

I work on a salary for a fairly large corporation. When I asked Mr. Hartfield for information I was specifically inquiring as to how the excitement in Washington inter-

ested the average citizen and asked him to ask some of his employees what their reaction was. He found a rather disinterestedness among his employees which I found interesting and heartening. To me it was interesting that a movement that had so much pressure interested so few.

I take responsibility for the article published in the Journal of October 2, 1937, concerning Group Health.

DR. CHARLES S. WHITE, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I am a surgeon. I graduated from George Washington Medical School in 1898, practiced my profession from that time, and have specialized in surgery from 1908 to date. I spent two years in private practice and eight years in hospital experience in Emergency, George Washington, and Columbia Hospitals in Washington, and part-time in New York. I am professor of surgery at George Washington University and head of the Department of Surgery in Gallinger and the Doctors' Hospital, and on the consulting boards of four or five others, including Emergency, Garfield, and Providence Hospitals. I have been connected with George Washington in a teaching capacity since 1899. I am on several committees at the hospital, one on administration and one on admission to hospital privileges.

I have been on the committee on admission since 1934, with Dr. Mallory and Dr. Howard Kane. Dr. Mallory covers medicine; Dr. Kane obstetrics and gynecology, and I surgery. In reporting on privileges we report to the staff of 40 or 50 men, who have practicing and teaching privileges in the hospital and medical school; George Washington University had two staffs, an appointed staff and a courtesy staff, the latter of which has no official connection with the hospital. Courtesy staff doctors are allowed to visit patients in the hospitals. The staff is appointed by the Board of Trustees of the University. The committee on applications, on investigating an application for privileges, refers it to the appointed staff. The appointed staff takes care of patients, mostly free patients, in the hospital of the University, whereas the courtesy staff is composed

mostly of those doctors, practicing physicians of Washington, who are permitted to take and treat private patients in the hospital. Any doctor who wishes to avail himself of courtesy staff privileges fills out an application on a printed form stating his qualifications, age, education, the societies to which he belongs, the medical papers written by him, and his experience. The application is read before a staff meeting and is then turned over to me as chairman of the committee on privileges; I sort them, keeping those relating to surgery, and referring those relating to medicine to Dr. Mallory and those relating to obstetrics and gynecology to Dr. Kane. I then refer applications for surgical privileges to the Washington Academy of Surgery, as in 1934-1935, we decided to adopt this procedure to secure investigation from the Academy. The Academy acts in an advisory capacity to the committee. The secretary of the Washington Academy of Surgery receives the applications, investigates them, and returns the applications with reports which I receive and take back to the next regular meeting of the staff for a vote. When the vote is taken the applicant is notified of the vote. Since I have been connected with George Washington University Hospital, or any of the hospitals here in Washington, no hospital permits a man to practice without courtesy privileges unless in a grave emergency, and then sometimes that is waived until he can make out the proper application, and that is true of all hospitals. After the application is voted on by the medical staff it is then sent to the dean, or the superintendent of the hospital, who happens to be the dean, and his secretary takes up the matter from that point on.

I am a member of the Washington Academy of Surgery and am on the committee investigating the qualifications of applicants to practice surgery. I know that an application on behalf of Dr. Raymond E. Selders, whom I never met personally, was made to George Washington University Hospital sometime in 1937 and was turned over to me after it was read at a staff meeting. I referred the application to the Washington Academy of Surgery. The reference of any application for courtesy privileges in George Washington Hospital to the Washington Academy of Surgery had nothing to do with Group Health, as all applications for surgery privileges are turned over to the Academy, and that procedure is routine. As soon as the application was returned by the Washington Academy of Surgery it

was read before the staff of George Washington University Hospital. The application was not delayed at all and went through the regular routine. I knew at the time that Dr. Selders was connected with Group Health because I had read of it in the newspapers, as news of the situation was all over the newspapers, including the front page. Dr. Selders' connection with Group Health had nothing whatsoever to do with the handling of his application at George Washington Hospital. The recommendation received from the Washington Academy of Surgery on Dr. Selders' application was adverse. The application was turned in to the dean, who presided at the staff meeting, with the notation that the Academy did not approve of his application. It was then put to a vote, submitted to the open staff meeting, and the staff voted not to give him the privileges. Nothing was said at the staff meeting that his application should be rejected because he was a member of Group Health, and that had no effect so far as I know on the vote; and the vote was based solely on his professional qualifications. The hospital made no independent investigation into the qualifications of Dr. Selders, and certain other doctors were rejected along with Dr. Selders, and his rejection in no way differed from them or from any other doctor seeking surgical privileges at George Washington whose application was denied.

When an applicant seeks general surgical privileges in a hospital that means the privilege of operating on anyone he might send there as a patient, and do any operation which he thinks the patient requires, without any sort of supervision. In other words, to have complete charge of the patient, and to do a major operation, open the abdomen, or anything you want. It is the highest privilege that you can give a doctor, and that is why such an application is scrutinized pretty closely, as a hospital is more or less responsible for the work being done there, and feels that man who can do any sort of an operation without supervision should be a first-class surgeon, with a large amount of experience. In some cases, a man is allowed to operate while some other older practitioner stands by in order to allow proper experience. "Without supervision" would mean that a man may go into a hospital and do as he pleases with the patient, if the patient permits it. I am a member of the District Medical Society, of the AMA, and am on the committee of the District Society dealing with

compensation, claims and adjustments. I do not now hold any office in the Washington Academy of Surgery, but am a past president of it, as well as of the Medical Society.

Cross-examination.

By Mr. Lewin:

Dr. John Reed was a member of the medical staff that voted on the application of Dr. Selders, as well as Drs. Jacob Kotz, Daniel Borden, Dr. Mallory, Dr. Arch L. Riddick, and Dr. Warren W. Sager; I only attended one meeting during 1937 and 1938, and I am not familiar with the committees or the members of the various committees of the Medical Society or their activities. I voted as I did on Dr. Selders' application because of the report received from the Washington Academy of Surgery. I don't know upon what the other members of the staff based their votes. Dr. Selders' application disclosed that he had graduated in medicine from the University of Oklahoma in June, 1927; that he received a Bachelor of Art; and Bachelor of Science degree in chemical engineering; that he received a Bachelor of Science degree in medicine. I think the University of Oklahoma is all right now, but I don't know what it was then. The application also disclosed that he interned in 1927 and 1928 at St. Joseph's Infirmary at Houston, Texas; I know nothing adverse to that institution, but whether or not he had good interne training would depend on the institution, and I cannot say whether his training was good or bad. I also found that he was a resident in surgery at Worcester City Hospital, in Massachusetts, in 1936-1937. I know nothing of the standing of that hospital, and nothing against it. This information was not used by our committee and was sent by the staff to the Washington Academy of Surgery for its recommendation. I was not a member of the credentials committee of the Washington Academy of Surgery and did not attend its deliberations or take part in the investigations it conducted concerning Dr. Selders. I saw that he had been admitted to practice medicine in the District; he had graduate work in the school of medicine in the University of Pennsylvania, a very good institution; and would appear to have some qualifications in some kind of surgery. Dr. Selders applied for general surgery, which means general surgery of all types and

would include minor surgery. We don't discriminate. He asked for general surgery and he was turned down in general surgery. He didn't ask for minor surgery. I saw that he was a member of the Harris County Medical Society and of the AMA, but didn't know whether he was a member of any of the local societies, and I presumed that he was not a member. I saw that he had had teaching experience in the University of Oklahoma and staff appointment at various hospitals, the Memorial Hospital in Houston, Texas, and St. Joseph's Infirmary, and had made some contributions to medical literature, but I don't think what a man writes indicates his ability in surgery. I see that he gave some references, a Dr. Lee, Dr. Brown, Dr. Moore, and Dr. McIvor.

I wasn't present at the meeting of the Washington Academy of Surgery that took up the application of Dr. Selders. The Washington Academy of Surgery is made up largely, if not entirely, of members of the Medical Society. I don't know what action the Medical Society took regarding the ethical question of a doctor being with Group Health. I think that if Dr. Selders had asked for privileges in minor surgery, on his record, he might have gotten it, but it is not customary to make a suggestion to that effect, as it is not up to the hospital to suggest how a doctor may obtain privileges; if he desires them he should seek them. If Dr. Selders had re-applied for minor surgery it would not come to me because that comes under medicine. The last I recall is that Dr. Selders' application came up again at a staff meeting on October 10, 1938, and it was moved and seconded that the application be referred to the Washington Academy of Surgery and follow the usual procedure. I know Dr. Glenn I. Jones but I never told him that any member of the medical profession who joined Group Health would lose membership in the Medical Society and that any member who consulted with a member of the staff of Group Health would likewise lose membership. I may have said it was my opinion that something like that would happen, but I couldn't tell him it would happen.

Redirect examination.

Dr. Selders' application took the regular course that every other application had taken prior to his, and ever since, as far as I know, and there was no exception in his case whatsoever. Since the time it was voted that the

Washington Academy of Surgery should make investigations on applications for general surgery I have never personally investigated an applicant and have always felt that the Academy was in a position to do it much better than I. I have never written any reference of any applicant, and the references, as well as the application, went to the Washington Academy of Surgery. Dr. Selders' application was on the regular form. We get about 150 to 200 applications for surgical privileges alone a year. Courtesy privileges, when granted, are for one year at George Washington. Along with Dr. Selders' application, in the course of a year, I sent 20 or 30 other applications to the Washington Academy of Surgery; other applications for surgical privileges were rejected, as it is nothing unusual to reject applications for surgical privileges. The question of membership in the local society has never come up in the consideration of an application, so far as I know. The matter of Dr. Selders' membership in any organization was not discussed. There was lots of publicity about the matter and I felt that Dr. Selders ought to have a square deal; I made it plain to the staff that their decision was to be purely on his professional qualifications. I don't remember seeing a questionnaire of Dr. Warfield's, and if I ever saw it I must have thrown it in the waste paper basket, for it made no impression on me, and no such questionnaire ever came before the staff of George Washington Hospital for action that I recall; and I have no recollection of ever acting on any such questionnaire. No action was ever taken on the so-called Mundt Resolution at any meeting I attended at George Washington Hospital, and such a matter never came before the staff for discussion. No motion ever came up for consideration by the staff to the effect that only members of the District Medical Society should be members of the staff of George Washington; as a matter of fact there are plenty of members of the staff who are not members of the District Medical Society, some 20 or 30, and there have been such for more than five years. I don't think that the staff at George Washington ever took any position whatsoever with reference to Group Health. I never heard Group Health discussed in the Society. When I voted upon the application of Dr. Selders I certainly did not vote for his rejection in an effort to restrain or break up Group Health. I voted to reject him purely on the report of the Washington Academy of Surgery in which

I had the utmost confidence, believing they would give him a proper examination or investigation, and voted for nothing else, as I didn't know Dr. Selders, had never seen him, and I would reject any man that the Academy would not approve, even my own son.

Recross-examination.

Surgical applications are referred to the Washington Academy of Surgery because the Academy has a committee of ten men having affiliations with all the hospitals in Washington, and I believe that such a committee of ten could investigate a man better than a committee of one, which would be me, and we refer such applications to that committee as it is already set up, acting for all the hospitals in Washington, in an effort to get a standard board of examination. When the Washington Academy reports on an applicant simply as disapproved that is sufficient for our purposes, as we have complete confidence in the Washington Academy of Surgery and, hence, the hospital voted to accept their recommendation and our committee knew nothing of Dr. Selders except that the Washington Academy of Surgery had turned him down for undisclosed reasons.

Redirect examination.

At one meeting the committee turned down two men for privileges, one Dr. Allan E. Lee, who asked for general surgery and was disapproved, and the other was a member of the District Medical Society also seeking surgical privileges, both turned down because we did not think they were qualified to do general surgery.

Dr. Henry C. Macatee, a witness for the defendants,

Direct examination.

By Mr. Leahy:

I have resided in the District since 1895. I have been a member of the Medical Society of the AMA since 1902. I have been a practicing physician in the District since 1901. I graduated from George Washington University in 1900, interned at Garfield from 1900 to 1901. In 1903 and 1904

I was superintendent of George Washington University Hospital. I am a member of the Society of Incorporators, of the Board of Directors, of the Executive Committee of the Board of Directors, president of the Medical Staff, and ex officio chairman of the Advisory Committee of Garfield Hospital. The Board of Directors of Garfield is the governing board and is composed of about 18 or 20 laymen besides myself, Dr. Reichelderfer, and Dr. Lindsay. I have specialized in internal medicine since 1918.

In the middle of May, 1937, my attention was first directed to Group Health when I was invited to attend a meeting at the office of Dr. William Gerry Morgan. Prior to that I knew nothing whatever of Group Health. I went to the meeting, which was attended by Drs. Morgan, Christie, Groover, Colonel Glen I. Jones, and some medical officer of the Army whom I don't remember. Colonel Glen I. Jones was the speaker, giving information concerning Group Health. The next occasion of my obtaining information concerning Group Health was at the meeting of the Executive Committee of the District Medical Society on June 1, 1937. At that time I was a member of the Executive Committee. I was then and am now a delegate of the Medical Society to the A.M.A. From 1905 to 1920 I was recording secretary of the Medical Society; in 1921 I was president of the Society and, therefore, I was a member of the Executive Committee by election and was chairman for two or three years.

At the Executive Committee meeting of the Medical Society on June 1, 1937 there was a discussion concerning Group Health. Dr. Verbrycke made a report that he had obtained a copy of a prospectus of a mimeographed pamphlet describing the purposes and plan of operation of Group Health, marked "Confidential," which I had seen a few days previously at Dr. Verbrycke's and my own office. The minutes of June 1, 1937 substantially indicate what occurred at that meeting.

Defense counsel read from the minutes of the Executive Committee meeting of June 1, 1937 (Gov. Ex. 36) to the jury as follows:

"The Chairman, in addressing the meeting, said that the reason for calling the special meeting was on account of certain serious situations that had developed. The Home Owners Loan Corporation, the Veterans Bureau, the Soil

Conservation Department, and the Reconstruction Finance Corporation had already undertaken the development of a plan for medical care of their employees. He had learned that the Home Owners Loan Corporation was attempting to get an appropriation from Congress"—

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"He thought it was the duty of every member of the Society to contact their representatives with a view to blocking this effort. The idea was to get sufficient funds to finance a medical service plan. Briefly, the plan, according to his information, was that Dr. H. R. Brown is to be the Medical Director at $8,000 a year. Mr. Brown is now in the Veterans' Bureau in charge of the Tuberculosis Division. Government employees would pay a certain amount per annum from their income. The Chairman was under the impression that it would be impossible to get an injunction out against the procedure and that the only hope would be to hold off the adoption of the plan until the Medical Society could work out a substitute plan that would be less vicious. Dr. Thompson called on Dr. J. Russell Verbrycke, Jr., who had been very much interested in this subject.

Dr. Verbrycke said that he had heard of this plan and he had in his hand a prospectus, marked 'Confidential,' in which details had been very well worked out. He added that there were certainly some parts of the plan that would seem intriguing. He had written a letter to Dr. W. C. Woodward, which he stated was semi-official, in which he outlined the situation with a view to getting the opinion of the AMA headquarters. He then proceeded to read rather extensively from the prospectus at hand. This prospectus was to be known as the Group Health Association, Inc. Mr. William F. Penniman of 1869 Wyoming Avenue, N. W., is President; Mr. H. T. Berry, 3019 Rittenhouse Street, is Secretary. The Twentieth Century Foundation was beyond a doubt interested in this so-called Filene Association, and would in all probability help finance the project to get it started. It had been estimated that there were some 119,000 Government employees and that the expected sum to be obtained from these employees would amount to $1,750,000.00 per annum. It was contemplated to hire 80 physicians; their salaries would range from $3,000.00 to $12,000.00 per annum. They would not be allowed to do outside work. Briefly, the plan was to have an employee, whose income

was $1,000.00 a year, contribute $40.00 a year for health service. If a man's income was $10,000.00, he would pay $400.00 a year. It is estimated that at the present time individuals pay from 4 to 5 percent of their income for medical care. One physician would take care of about 833 people. It was contemplated to have the wife and family of the Government employee included. The children would be on a sliding scale.

Colonel Glenn I. Jones, who was present by invitation, stated that he had been invited to a meeting of the Home Owners Loan Association which was organizing a plan for taking care of the health of its families. He stated frankly that he had been offered the general management of this organization. The conference he attended lasted 2½ hours. He promised then that he would attempt to draw up an organization chart. He first suggested a small clinic with physicians and consultants. He told them frankly that if the Medical Society of the District of Columbia disapproved their efforts that there would not be any available medical assistance which could be depended upon. He stated that he had consulted Drs. C. S. White, T. A. Groover, A. C. Christie, and also William Gerry Morgan. He learned that they were opposed to the entire proposition of the prepayment plan."

My statement is not fully represented in the minutes. What I actually said was that I had attended the meeting at Dr. Morgan's office, that I heard the statement made by Dr. Jones at that time and that it was obvious that much of our information was based on rumor; that the only concrete evidence about the plan was the prospectus; that the plan had not yet been fully organized; wasn't fully completed; wasn't ready to go into action. If and when it did go into action and came into conflict with the Medical Society in any way our attitude would have to be entirely predicated on our own organizational rules and regulations. That we might have to consider the question of contract practice; that in that case it might be necessary to discipline members if they entered into contracts or contract practice contrary to our regulations; that if the relations to hospitals were undesirable from a medical point of view our action would be limited to such influence which we might exert through our members, who were members of the medical staff of the hospital, but that we could not directly

control the hospital for reasons well known to ourselves. The regulation I had in mind in speaking of contract practice was the one adopted in amended form in March 1937, Article IV, Section 5, which had been in the constitution since January, 1936. The adoption of that particular article had nothing whatsoever to do with Group Health, nor did the amendment thereto, adopted in March, 1937, for to my knowledge nobody in the Executive Committee had any information about Group Health in March, 1937, and I had none. In no discussion of the amendment by the Executive Committee was GHA ever mentioned. The object of the amendment was to provide the Society with a means of regulating its members with regard to contract practice insofar as the contract might be out of accord with ethical principles, and our conception of good public policy. The amendment was occasioned by a very disagreeable problem which arose in the District of Columbia, that had nothing whatever to do with Group Health, but rather had to do with a member and an industrial medical clinic formerly employing that member but which had summarily discontinued his services, and employed another member. The clinic was not Group Health and had been in operation prior to January, 1936. The June 1, 1937 meeting of the Executive Committee was held and the only action taken there was to authorize the appointment of a subcommittee to gather facts relative to Group Health for presentation to the Executive Committee for its guidance. Dr. McGovern was chairman of that subcommittee, the other members being Dr. Hooe, Dr. Templeton, Dr. Connolly, Dr. Davis, and Dr. Gill, Jr. I had no official connection with the subcommittee. The appointment of that committee was the only action taken by the Executive Committee at the June 1 meeting.

I discussed Group Health with some colleagues at the Atlantic City convention of the AMA in June, 1937, and with Dr. Woodward on several occasions, and made a brief report to the House of Delegates of what we had learned in Washington; it was received but no action was taken on it.

On June 21, 1937 the Executive Committee meeting of the Medical Society received the preliminary report of the fact-finding committee; Dr. McGovern reported for his committee that they had been diligently seeking information regarding Group Health and had been unable to obtain official information. I made a verbal report of my attendance at

the AMA convention and my efforts to communicate these facts and rumors to the House of Delegates, and Dr. Verbrycke made a report, Dr. Verbrycke stating that from what information could be obtained, the movement as it appeared was not a drop in the bucket to what this movement might grow to; Mr. Ross Garrett appeared at the meeting with a great deal of information. Mr. Garrett is the administrator of the Health Security Administration, an eleemosynary institution for bringing contact between indigent and near-indigent patients with facilities for their medical care, in hospitals and dispensaries.

Q. Under whose supervision is it administered?

The Government objected on the ground of immateriality and was sustained, with exception noted.

Defense counsel read the minutes of the Executive Committee meeting of June 21, 1937 (Gov. Ex. 36) to the jury as follows:

"It was decided that it was only right that the Executive Committee should know all the facts and, therefore, Dr. Brown and Mr. Russell should appear before the Executive Committee and give all the facts."

"Mr. Garrett has emphasized that any action taken by the Society should be a matter of all haste as he had definite information that the material and wherewithal for setting up a medical care prepayment plan was definitely at hand. It was ascertained that the Government is allowing free time for the activities destined to bring a plan of medical care to Washington. No one seemed to be able to find out whether Dr. Brown and Mr. Russell were on the Government payroll. It was mentioned in this connection that with various New Deal projects workers were not always shown to be on the payroll but their source of income from the Government appeared unmistakably. Dr. Verbrycke at this point with a detailed plan that had been organized by the subcommittee as an acceptable substitute for the cooperative medical service plan.

"Dr. Verbrycke stated that he had sent by air mail an outline of the cooperative medical service plan to Dr. W. C. Woodward, and requested that Dr. Woodward meet with him in Washington. Every effort was made by Dr. Woodward to ascertain who was financing the project. He met with little success with his inquiries.

"It was stated that Dr. H. C. Macatee at the meeting of the House of Delegates in Atlantic City, outlined the plan that was all ready for trial in Washington. It seemed as though the attitude was:

" 'We are sorry; we have no solution; you work it out.' "

The plan referred to was a report made by the committee on economics, Dr. Verbrycke, chairman, in which the salient principles of some cooperative plan might be considered by the Medical Society to offer to the public. The minutes of June 21, 1937 show the following action:

"The Secretary made a motion that a special meeting of the Executive Committee be held on the evening of Wednesday, June 23rd, and that Dr. Henry Rolfe Brown be informed that his presence would be welcomed; also the presence of any of his conferees.

This motion was seconded and in the discussion the question of executive session on that evening was brought out. It was decided that this could be worked out afterwards. This motion was adopted."

The minutes do not convey the spirit of what I said on that occasion. I said substantially what I said on a previous occasion in which I stated that the record would have to be qualified by my conviction that so far as the Medical Society itself could proceed in this or any similar circumstance, it would have to be limited by its own constitution and by-laws, and what it could do under the constitution and by-laws in disciplining its members if they should become involved adversely with any provision of the constitution and by-laws, and that so far as hospitals were concerned, we should only exert an influence through our own members so far as that might go.

Defense counsel read from the minutes of the Executive Committee meeting of June 21, 1937 (Gov. Ex.. 36) as follows:

"Dr. H. C. Macatee, in addressing the meeting, stated that the Principles of Medical Ethics of the American Medical Association had been amended at the meeting in Atlantic City so that the interpretation of the free choice of physicians would be broadened with the idea of adjusting itself to the various compensation laws. He then recited some of the details of his attempts to bring to the House of Delegates the important situation that now confronts the profession in Washington. It was not until Thursday,

the last session of the Delegates, that he was able to bring the matter on the floor, and as stated scant attention was given to it. Details of Senator Lewis' presentation to the House of Delegates were given. It appeared that the Senator had come before the House of Delegates with the knowledge and approval of the Nation's Chief Executive. He let it be known that the President was sympathetic with the American Medical Association and its motives, and he, Lewis, wanted to be advised as to just what the profession wanted done. The Kopetzky set of resolutions were definitely tied in with a conference"——

Mr. Lewin: The part that you are reading now—does not that refer to something else that is not germane to this case?

Mr. Kelleher: And is not in evidence, either.

Mr. Leahy: Oh, yes; it is all in evidence (resuming reading):

"The Kopetzky set of resolutions were definitely tied in with a conference that had been held at the White House last April, at which Miss Esther Everett Lape and other socially inclined members of the profession were present. Specifically, representatives of the American Medical Association were excluded. In effect Kopetzky's series of resolutions, after going to a reference committee, were in essence similar to what was given two years ago to the plan sometimes known as the Washington Plan presented by Dr. Macatee. In effect the American Medical Association had accumulated considerable data and these data were available to the various state societies and to the workers in the United States Government. The plan from New York was predicated on the principle that care of the sick indigent was a taxpayers' problem; that the doctor should be paid for taking care of them, further that hospitals should be financed by the Government and that no longer would there be many hospitals in bad financial straits; further, the Government would subsidize scientific investigations of various hospitals.

Dr. Macatee, in summary, stated that two ways available in combatting or controlling any such scheme as recently proposed in Washington might probably be handled (1) through disciplining our own members who undertook to participate and (2) the possibility of doing something to recalcitrant hospitals through pressure on their staffs. He

mentioned the various cooperative plans that were now in force, that the Ross-Loos plan of California and various county societies had through their medical societies handled the situation. There was now a bill before the legislature in the State of Wisconsin that would definitely prevent any interference with doctors who were members of societies in their activities in any scheme of socialized medicine. In other words, the societies would be prohibited by law to discipline their members."

Dr. Brown and Mr. Russell were invited to appear on June 23rd but actually appeared on June 24, 1937, i. e., Dr. Brown, Mr. Penniman and Mr. Zimmerman came on that date.

Defense counsel read from the minutes of the District fair transcript of what occurred.

I am not going to take the time, ladies and gentlemen of the jury, to read all of this; it is too much. There are some portions which I would like to bring to your attention, more particularly a statement by Dr. Conklin which was given toward the end of the meeting, as well also as a statement by Dr. Groover (reading)

"DR. CONKLIN"—

This is toward the end of the meeting——

"I think that all of us present tonight appreciate just what these gentlemen have done. They have been kind enough, good enough, to come down and meet with us. They have answered all of our questions and have not denied us at all, no matter what their own personal feelings may have been concerning some of it. We are primarily interested in the patient's welfare. That has been demonstrated time and time again in this country and throughout the United States. I am wondering if they would accept a committee of three of the Medical Society to meet with them with a view of making presentations as clearly as possible of the Medical Society's attitude primarily toward this particular proposition from the viewpoint of the patient primarily. I wonder if that would be acceptable. I have no authority to say that the Medical Society would appoint such a committee, but if that would be acceptable to the Medical Society, do you gentlemen think you would accept a proposition of that kind?

Dr. Brown: A further meeting to elucidate certain questions?

Dr. Conklin: I am sure there are certain ideas that definitely seem to be fixed. There is a possibility in further conference with three representatives of the Medical Society who would go down to the Home Owners Loan Corporation and talk these things over and see whether or not some alternative proposition will operate that would be acceptable to some eight hundred practicing physicians here in the District of Columbia. I would think it would be a wonderful thing."

Mr. Lewin: Will you read what Dr. Brown said?

Mr. Leahy: Oh, surely (reading): "Dr. Brown. Our objectives are identical with those you have expressed. We have no objections to meeting any committee of three.

The Chairman: To confer with their own committee if they would like to have such a meeting.

We have a board of trustees, said Mr. Penniman. It might not be a bad idea to have as many men as they want to discuss the thing further. There is no question that other units in the Government are going to undertake the same thing.

Dr. Conklin: If we may have a definite assurance of tentative acceptance of this plan, I think your coming down has been just the most successful thing with a view to definite harmony. I think that is what we want. We want to see these men and greet these men and have them certainly not fighting organized medicine, because I think any doctor who attempts to do that is doomed to failure. We want to have this committee of three representatives meet with you and talk these things over with a possibility of making some little rearrangement wherein we can come before our entire membership and present this thing and recommend adoption.

Dr. Brown: We are anxious for cooperative intercourse. We would be glad to have you consider those plans.

Mr. Penniman: I want to say what I should have said and would have liked to have said at the outset. Reversing the words of Shakespeare, I came down here with the idea of praising Caesar, not burying him. I have the most profound respect for the medical profession, always have had and always will have. It is the desire of this Association to work to the ultimate end that we may give our employees

medical care—I speak not as an official of the Home Owners Loan Corporation, but as one of the employees—medical service of the highest type within their ability to pay and to solicit at every point of view possible the full cooperation of the Medical Society of the District of Columbia. Glad to have it. I would like to make a suggestion. Since we have a board of trustees consisting of eleven employees of the Corporation who have been elected by the employees, if you would be good enough to drop us a line so we can put it clearly to the board, your point of view, I am safe in saying that it would meet with a ready response.

Dr. Conklin: You mean, the point of view as to this committee of three?

Mr. Penniman: Yes."

And at that time Mr. Penniman and Dr. Brown and Mr. Zimmerman left the meeting. Then following a suggestion on the part of the chairman, after those three had retired:

(Reading further):

"The chairman said he would welcome a motion to the effect that a copy of these minutes be sent to the active membership so they would know what was going on. It was his opinion that 90 per cent of the membership knew nothing about this plan."

Then follow pages of discussion back and forth upon a motion, and finally, after expressions by Ruffin, Bennett, Hooe, and Schoenfeld, and I don't know how many more, there was a motion.

A proposition was adopted at that meeting finally, and a committee including part of the old committee was appointed for that purpose. I served as a member of that committee. On July 26, 1937 I went down to talk with the board of trustees of Group Health. That committee reported to a meeting of the Executive Committee on July 12, 1937. The minutes of that meeting (Gov. Ex. 37) is a fair transcript of what occurred.

Defense counsel read excerpts from the minutes of the Executive Committee meeting of July 12, 1937 (Gov. Ex. 37) as follows:

"Dr. F. X. McGovern, Chairman of the subcommittee that was appointed to confer with representatives from the Group Health Association, Inc., was recognized and

made a motion that his report be given preference over the other agenda for this meeting and that it be heard at this time. It was duly seconded and adopted.

For the information of the new members of the Executive Committee Dr. McGovern outlined the prepayment medical care plan that has been set up by the Home Owners Loan Corporation, stating that the Executive Committee had appointed a subcommittee to meet with the committee on Medical Economics to study the prospectus and bring a report back to this committee. A report which was prepared by Dr. J. Russell Verbrycke, who was then the chairman of the committee on Medical Economics, was approved in principle by the Executive Committee at a subsequent meeting. Since that time the subcommittee has met and studied and reviewed supplementary plans by Dr. Verbrycke which Dr. McGovern offered as a report of the Executive Committee tonight.

Dr. H. C. Macatee interpolated for the information of the new members of the Executive Committee that upon the adoption in principle of the report of the subcommittee, the subcommittee was given instructions to negotiate on the basis of the report with the Medical Service Corporation, and this supplementary report is now made to gain alternative instructions.

Dr. McGovern, in answer to why the subcommittee had not met with the Group Health Association representatives up to this time, said that his committee did not feel that it was ready to meet until it had something concrete to offer. He stated that within the past week Dr. Olin West, Secretary of the American Medical Association, was in the city and met with the committee and it was felt that very important information was obtained through this meeting. He added that he had a telegram from Dr. West stated Doctors W. C. Woodward and R. G. Leland, the latter Director of the Bureau of Medical Economics of the American Medical Association, would be in Washington Wednesday morning of this week."

Then other members spoke, including Dr. Templeton and Dr. Sprigg and Dr. Hooe, and then Dr. McGovern again. Dr. Ruffin spoke, and Dr. McGovern added that his committee "did not know just what the attitude of the Executive Committee of the Society would be, whether to fight this thing with the weapons at hand or possibly set up an

organization to combat it. The committee felt that some definite instructions should be given along that line."

Then follow talks by various members of the committee, and Dr. Macatee spoke and said that he had talked to a patient who was an attorney in the Corporation, and he said it could be done perfectly legally, and that if his recollection was correct the papers had gone over this attorney's desk and they could do anything not contrary to the law or the Constitution for the benefit of their employees. (Reading further):

"With respect to the duties of the subcommittee Dr. Macatee pointed out that according to the letter which was addressed to the members of Group Health Association it was clear that at least one medical man had made a contact with the Group and that they are on the verge of going into action. It had been thought by the subcommittee that we could probably go before the trustees and we could ask them what their prospectus meant when it said that they wished to enter into the fullest cooperation with the Medical Society of the District of Columbia, to ask for representation on their board in an advisory capacity and they wished to do their work in a harmonious way. We thought we might say to the board of trustees that the Medical Society had looked upon the organization with some concern."

The point was raised as to whether the subscribers would not, in the long run, have the free choice of physicians, and whether they understood that as soon as some grave medical problem arose among the employees they would follow the usual human instinct and say, "We don't want these hired men; we want the best", whether that would be disruptive of the whole plan, whether in view of those facts or other facts they might not feel that the principle of organized medicine, that the free choice of a physician is essential to the success of a[illegible]y proposition, and whether they might convey something looking to the entire medical profession of the District as a source of the medical and surgical services needed. (Reading further):

"If they could consider that we would be glad to take it up with the Medical Society and see what could be worked out. It is for this committee to decide whether it is likely that any good will come from such a meeting."

There followed discussions by the secretary, Dr. Ruffin, Dr. Hooe, and then the motion which theretofore had been offered was withdrawn. (Reading further):

"Dr. Ruffin made a motion that the subcommittee be instructed to meet with the Home Owners Loan Corporation representatives to be addressed by Dr. Macatee along the lines discussed and bring a report back as promptly as possible to the Executive Committee with a view to a meeting of the Medical Society. Seconded and carried."

There followed a good deal of other talk with reference to other matters which are not germane to the point here.

In pursuance of the motion made by Dr. Ruffin, I personally addressed the Board of Trustees of the HOLC along the lines discussed. This was on July 26, 1937.

Q. There is a matter contained in the minutes of the meeting of July 12 which I would like to have you explain, please, and that—I think I am right in my memory—is with reference to a supposed or a so-called approved list or White List. Do you know to what I refer?

A. Yes, sir.

Q. Am I correct in saying that this matter also came before the attention of the meeting on July 12?

A. It did.

Q. Do you recall, Doctor, at what date, if any, any authorization was made to prepare an approved list which has been called a White List?

A. That was incorporated in the constitutional amendment adopted in March, 1937, in which the Executive Committee was charged with the duty of preparing such a list.

Q. Do you recall whether anybody upon the Executive Committee had been working upon the list from the date in March when authorization therefor was made?

A. There was a subcommittee, of which Dr. McGovern was either chairman or a member, which was working on that duty.

Q. I ask you, Doctor, if the preparation of an approved list had anything whatsoever to do with Group Health Association?

A. Nothing whatsoever.

Q. I will ask you further what the approved list resulted from as an activity of the District Medical association?

A. It resulted from a hearing on a complaint by the Executive Committee against an industrial clinic which, in

turn, resulted in the original adoption of Chapter 9, Article 4, Section 5, which was amended in March, 1937.

Q. Do you recall, Doctor, whether or not any legal advice had been sought by the Society with reference to the amendment of this approved list?

Mr. Lewin: I object to that, may it please the court, as totally irrelevant, incompetent, and immaterial.

The Court: What was the question?

Mr. Leahy: I asked the Doctor whether he recalled, with reference to this approved list, and also the amendment in March, under which the approved list was authorized, any advice of counsel had been sought and, if so, from whom?

The Court: Is that the White List?

Mr. Leahy: Yes, sir.

The Court: Objection sustained.

Mr. Leahy: May we approach the bench for just a moment, if your Honor please?

The Court: Yes.

(Counsel for both sides approached the bench and conferred with the court in a low tone of voice as follows:)

The Court: It is the same old question, isn't it?

Mr. Leahy: No, your Honor. This is on a different matter. I want to call the lawyers to corroborate the fact that the preparation of the White List had nothing to do with GHA; no question about the legality or illegality of it.

The Court: You mean, someone to corroborate what the witness is saying?

Mr. Leahy: Yes.

Mr. Lewin: He has not been permitted to say that, though.

The Court: I do not think his advice about it is of any importance. You may ask if there was an attorney present who heard what went on.

Mr. Lewin: That was on July 12?

Mr. Leahy: No; in March.

The Court: You want to corroborate this witness. His advice does not have anything to do with it.

Mr. Leahy: I will call him later on——

Mr. Lewin: Wait a moment, now. As I understand it, the facts are these, that you had a lawyer advising him back in the early part of 1937, but at the time the White List was prepared and issued, that was on July 12.

Mr. Leahy: It was authorized in March of 1937.

Mr. Lewin: The preparation of a list was authorized; that is right. That is the legal advice?

Mr. Leahy: I want to show that the preparation of the list had no connection with GHA whatsoever.

Mr. Lewin: But you cannot do that by saying that the constitution had nothing to do with it. They used the constitution on July 12, right there in that very meeting.

The Court: Whether they were advised by counsel I hold to be immaterial and irrelevant, and the objection is sustained.

Mr. Leahy: What I wanted to ask, your Honor, was this question: Were any attorneys present at that time? If there were, who were they? And that is all. I am not going to ask him for anything else, under your Honor's ruling.

The Court: What is the basis of that?

Mr. Leahy: Because I want the attorneys to show that the authorization of the White List had nothing whatsoever to do with GHA, that GHA did not enter into the picture. I want to corroborate the witness.

Mr. Lewin: The White List was issued July 12, 1937. It could not have any bearing upon why they left Group Health off the White List in July.

Mr. Leahy: It shows that the White List which was issued in July was not in reference to GHA at all.

The Court: If you can show that the questions leading up to the adoption of the White List occurred at some earlier period when GHA was not under discussion at all, that is all right; but I do not see what attorneys have got to do with it.

Mr. Leahy: I just want to identify those people who were there, so I can call the people who were there.

The Court: I am not going to have any advice of counsel in this. I do not see it, myself. It seems to me that the way to get at it is, as I suggested, to show that the origin of the thing was something else than GHA.

Mr. Leahy: That is what I was trying to get at.

The Court: I think you have a perfect right to show the history of the legislation as it developed, as showing the object and intent and purpose of it, and the background that brought it about, or to exclude the GHA as the motivating object of it, don't you see. What I am indicating is that I do not see where the advice of counsel gets into it in any way. So, whatever you do, do it with that in mind.

Mr. Leahy: I will, surely.

The Court: I can pass on individual questions a little better, but do not put questions which would be contrary to my conception of this thing. That is what I have in mind. If you do feel you want to put them, I think you had better come up here first.

Mr. Leahy: I will put a question which I have in mind, in some form to bring out this answer. I would ask the question, Were there any attorneys present in March of 1937 when this amendment and the authorization to prepare an approved list was adopted?

Mr. Lewin: And we enter an objection to that.

Mr. Leahy: Following that, Who were they?

The Court: Then what?

Mr. Leahy: That is all.

The Court: What is the purpose of it?

Mr. Leahy: The purpose is this: I think it is strongly indicative that this had nothing to do with GHA. We can show that for a year they had advice of counsel in order to meet another situation, and counsel advised them that this could be adopted under that other situation.

The Court: I do not think the advice of counsel has anything to do with it. The question is whether there were other objects which brought about the consideration of such action. It does not make any difference what advice they were given by lawyers about it or whether they consulted lawyers. The thing which I think you have a perfect right to do is to show the historical background of this resolution or constitutional amendment, whatever it was, which will eliminate GHA as the object of its enactment. (Addressing the jury): It is a little early, but I will let the jury go out now. Maybe you can get a little longer recess to make up for this morning.

(The jury withdrew from the courtroom.)

I of course do not want anything to occur that will impinge upon my main ruling of the other day, because I considered that carefully, and I feel that I am right about it and I think I ought to see that it is carried out.

Frankly, as you state the matter to me, I do not see what projecting lawyers into the matter has to do with it, because certainly I will not permit anything in the nature of disclosures of either the advice or the approval of coun-

sel about such matters. I will give you sufficient leeway to trace out the origin and history of this so-called legislative matter up to the point of its adoption in any way you can which excludes GHA as its object and intent.

Mr. Leahy: I will try to state it if I can. The purpose of asking the question as to whether attorneys were present in connection with the formulation of the amendment is in order to elicit information that the amendment had no connection with GHA; and then, when the attorneys can be called to corroborate the testimony of the witness, they would testify, not for the purpose of showing whether it was good or bad, lawful or unlawful, but merely that their advice was sought with reference to the formulation of the amendment in a manner entirely distinct from and unrelated to GHA.

That was my only purpose. So that if Mr. Flannery is put on the stand, I can ask him, "Mr. Flannery, was there anything said to you about GHA and did you give advice as to the amendment?"

The Court: Mr. Flannery was not present at the meeting, was he?

Mr. Leahy: I think he was present at the Executive Committee meeting.

Mr. Lewin: I can check for you, but I do not think so; at least it does not appear in the minutes that he was present.

Mr. Leahy: I would not know one way or the other. I might be wrong.

Mr. Lewin: My impression is that the subcommittee, back in the fall of 1936, had employed Mr. Flannery and Mr. Wheatley.

Mr. Leahy: Yes.

Mr. Richardson: Does the court intend to permit the Government to raise any question as to the motive back of this amendment to the constitution?

The Court: This is the White List. That is one of the actions they rely on to show conspiracy, I assume. It would not make any difference, as I pointed out, what the motives are. You have the question of intent, and intent, of course, would encompass the factual background that brought about the enactment of the resolution for the amendment.

Mr. Richardson: With reference to attorneys, it had to start with the inauguration of the enactment of Section 5

out of which grew the White List, because that was promulgated under Section 5. If any question whatever is to be raised in this case as to the promulgation of the constitutional provision, whatever the purpose was, then it seems to me that the proof must be pretty broad.

The Court: I think that if Mr. Flannery was present at a meeting at which it was under discussion or in which action was taken, he might, of course, for the purpose of narrating the occurrences in that meeting, be a witness the same as anyone else. But if he was merely consulted by some member or agent of the Association in connection with the matter, then he is not relating anything he knows; he is relating only what he has heard. I cannot see the relevancy of it except for the one thing of detailing the occurrences leading up to the enactment of the resolution itself, if they are material. But I do not think they are material except as they go into the factual basis for it.

Mr. Leahy: I agree with you on that.

Mr. Lewin: I was going to make this observation. The mere fact that a provision of the constitution may have been lawfully passed, or passed for some particular reason —I have no doubt that the constitution of the Medical Society was not passed to hit Group Health, but we claim that acting under that constitution they issued this list which cut Group Health off.

Mr. Richardson: Would you concede that Section 5 was enacted without any such intent?

The Court: If you contend that the resolution was an overt act passed with the intention and for the purpose of carrying out this conspiracy, then of course they have a right to go into the intent and to show that it was passed for other purposes. There is no question about that.

Mr. Lewin: Our contention is that it was the first use made of it.

The Court: If you disclaim any such intention and say it was passed for a proper purpose but it was nevertheless put to an improper purpose, that is another thing.

Mr. Lewin: But I cannot quite go that far, because I think it was passed for an illegal boycott against any outfit they did not like.

The Court: If they can show otherwise, they have a right to show it; but they cannot show it in the way Mr. Leahy suggests. That is simply hearsay and goes merely to motive rather than to intent. I am not going to permit that.

Mr. Richardson: It seems to me that you have opened the door if you charge that what was done under it was done for one purpose, and the defendants charge it was done for an entirely different purpose.

The Court: You can take a perfectly lawful act of an organization and divert its use to unlawful purposes.

Mr. Leahy: Certainly.

Mr. Richardson: It becomes a question of fact, though, whether or not it is for an unlawful purpose.

The Court: For the purposes of this question, if it can be disposed of in that way, you may consider whether or not you are willing to admit that this constitutional provision originated and was enacted for other purposes than GHA.

Mr. Lewin: If I could state what I thought those purposes were and put that into a stipulation I would be willing to go along on that. If the explanation of this comes in, I think I am entitled to go into the minutes to show that they were warned that this would be a boycott and be an illegal one against anybody who fell within the terms of it.

Mr. Richardson: It is a direct attack on the legality of Section 5, then.

Mr. Lewin: No; intent.

The Court: Certainly if they attempted to show that they were acting upon the advice that it was lawful, you have a right to show the contrary. But I am inclined to think that this matter of belief as to the lawfulness of the act is excluded. I cannot see anything so far in this case, as I pointed out in my memorandum, to justify it. There is a very, very narrow field of the criminal law that permits that sort of proof. It is very narrow. Exception noted.

Defense counsel read from the minutes of the Executive Committee meeting of July 12, 1937 (Gov. Ex. 37) as follows:

"Dr. McGovern stated that he requested the various county medical societies in Virginia and Maryland, within 10 miles of the District of Columbia, to send him a list of their membership. He was not very successful by letter and intended to contact the secretaries personally. He added that there were a few physicians practicing medicine in the District of Columbia who were not on the rolls of the Society. The Society's office was busy at the pres-

ent time checking the list of physicians and surgeons as classified in the newest telephone directory and the Commission on Licensure has been approached to obtain a list of all licentiates in the District of Columbia.

The Chairman, Dr. Sprigg, stated that he requested a list of the licentiates and the Society's office was informed that the records of the Commission on Licensure would be available if the Society could supply clerical help to type the list.

Dr. McGovern read a proposed list of approved organizations, groups and individuals.

Dr. Macatee suggested that the words 'employed by' be substituted for the words 'connected with' in item 10. With this change the list was approved, upon motion, duly seconded and adopted, as follows:

1. All members of the Medical Society of the District of Columbia.

2. Medical staffs of all hospitals, institutions and clinics, each member of which has been approved by the Medical Society of the District of Columbia.

3. The United States Government Medical Personnel on duty in the District of Columbia, or within 10 miles thereof, i.e., the United States Army, Navy, Public Health Service, and the Veterans' Administration.

4. The Health Officer and attached medical personnel.

5. Membership of the District of Columbia Dental Society.

6. Membership of the Homeopathic Medical Society.

7. Members of the Montgomery County (Md.), Prince Georges County (Md.), Fairfax County (Va.), and Arlington County (Va.) Medical Societies, who reside within 10 miles of the District of Columbia.

8. Members of the Alexandria Medical Society.

9. The following compensation clinics: Farragut Medical Clinic, operated by Frank E. Gantz; First Aid Station, operated by Arch L. Riddick; Harry M. Lewis Clinic, operated by Harry M. Lewis; Market Compensation Accident Clinic, operated by M. J. Kossow; Northeast Insurance Clinic, operated by G. Henry Rawson; Union Market Workmen's Compensation Clinic, operated by Maxwell Hurston; Washington Industrial Accident Clinic operated by Edward Clark Morse; Washington Medical Building Workmen's Clinic, operated by Charles S. White.

10. All medical personnel employed by the Federal or Municipal Governments within the District of Columbia or within 10 miles thereof.

11. Membership of the Medico-Chirurgical Society (colored medical society).

12. Membership of the Robert T. Freeman Dental Society (colored dental society).

Dr. Raymond T. Holden, Jr., inquired as to the personnel (medical) of the proposed Group Health Association, Inc.

Dr. Hooe pointed out that it was a separate individual corporation and would have to be approved as a single unit. As a matter of information, Dr. Hooe would inquire if he was right in the assumption that this approved list would not have to be submitted to the Society but from tonight on would be filed in the Secretary's Office for reference."

Then follows certain discussions with reference to that by Dr. Hooe, the Secretary and Dr. Ruffin.

"Dr. Macatee said he understood that the list as read by Dr. McGovern was not a complete list. Was it to be assumed that when it was added to that another registered letter would have to be mailed to 900 or more members?

Dr. Hooe said that there were a good many fine men who were not members of the Medical Society, such as Drs. Henry R. Elliott, R. J. Kemp, and others. When these individual names were obtained they would be submitted by Dr. McGovern to the Executive Committee for approval.

Dr. Hooe's motion, with amendment by the Secretary was duly adopted."

I meant, when I stated that the approved list as read by Dr. McGovern was not a complete list, that Dr. McGovern had a great deal of difficulty in formulating a complete list because of incomplete information from the surrounding counties and incomplete information from our own District. The approved list as it came before the Executive Committee on July 12, 1937, did not have anything whatsoever to do with the approval or disapprovel of Group Health because Group Health was not at a stage of development where it had asked for approval or where approval could be given; the Executive Committee at that time did not have sufficient information about Group Health to approve or disapprove it.

The approved list had been directed to be prepared in March of 1937. The approved list was mailed, as directed by the Executive Committee, to each member of the Medical Society. I do not recall that there was any direction of the Executive Committee that the list should be mailed also to the hospitals. Nothing occurred at the meeting of July 12, 1937, that is not recorded in the minutes of that date. The list was mailed on July 29, 1937.

Following the meeting of July 12 the subcommittee of the Executive Committee met with the Board of Trustees of Group Health on July 26. Drs. McGovern, Conklin, Verbrycke, Groover and Templeton and I were there. Dr. Groover is now deceased. We met in a large room at the office of the HOLC. I discussed with the Board of Trustees of Group Health the questions pertaining to it, and the attitude of the District Medical Society thereto.

Following the meeting a report was made to the Executive Committee on July 27, 1937, and then a report was made from the Executive Committee to the Medical Society on July 29, 1937 (Gov. Ex. 37). The transcript of the meeting (Gov. Ex. 10) prepared by stenographers of the HOLC records what was said at the meeting on July 26 surprisingly well.

Defense counsel read part of Gov. Ex. 10 to the jury.

Following the meeting of July 26, 1937 (Gov. Ex. 10), no further or additional information about Group Health was ever voluntarily given us that I know of.

With reference to the suggestions that I brought to the attention of the Board of Trustees of Group Health, particularly the questions to be answered as to the legality of Group Health, the Medical Society received no further communications from Group Health of any kind or character.

The minutes of the Executive Committee meeting of July 27, 1937 (Gov. Ex. 37) is a record of that meeting.

Defense counsel read from the minutes of Executive Committee meeting of July 27, 1937 (Gov. Ex. 37) as follows:

"A special meeting of the Medical Society of the District of Columbia, held Tuesday evening, July 27, 1937, at 8 p. m.

"Dr. F. X. McGovern, chairman of the subcommittee that had been appointed to make contact with the Home Owners Loan Corporation medical unit, was called upon to make a report. He opened his remarks by stating that pursuant

to recommendations made at the last special meeting of the Executive Committee he had prepared a letter which was sent to Mr. William F. Penniman in which letter request was made for copies of (1) contract of the Home Owners Loan Corporation; (2) adopted constitution and by-laws; (3) form or forms of applications for membership, and (4) any form of contract or agreement setting forth the service to be rendered to employees and their dependents.

"Dr. McGovern stated that Mr. Penniman had not given him a written answer but had called him up and asked that he have luncheon with him at the Raleigh Hotel. On this occasion he frankly stated that he would give responses to the questions asked in the registered letter that had been received, but copy of contract asked for he said he would have to refuse to exhibit. He thought the Medical Society's asking to see this contract was quite similar to going into Garfinckel's department store and asking them to show the contract they had with some firm with which they were doing business. Dr. McGovern then proceeded to read the prepared report as follows:

"'Known facts in re the Home Owners Loan Corporation.

"'1. Corporation, Group Health Association, Inc.

"'2. In Home Owners Loan Corporation with which it had a contract.

"'3. Mr. W. F. Penniman is president, Mr. R. T. Berry is secretary-treasurer. Dr. Henry Rolf E. Brown is medical director.

"'4. Instituted presumably to give medical care, complete, to any and all members of the HOLC who may care to join it.

"'5. Non-profit voluntary prepayment insurance organization.

"'6. Must be in some way related, possibly by contract, to Home Loan Bank Board.

"'7. President, Mr. Penniman, avoided replying by letter to an official letter from the Society to him.

"'8. Mr. Penniman refused to give your committee a list of physicians employed by the corporation.

"'9. Articles of incorporation so worded that all Federal Employees except Army and Navy may belong.

"'10. President, while he states that purpose of the corporation is to provide medical service to low-income individuals, at the same time admits that the constitution and by-laws do not establish any income level.

"'11. Invites attention to many other similar organizations in existence throughout the country and claims they do the job better than would otherwise be done.

"'12. The lay members of the board of directors sincerely believe that they are performing a needed helpful and humanitarian function for their employees and apparently are firmly convinced that nothing that they are doing is in conflict with the established ethical principles of organized medicine.

"'13. Dr. Brown is a physician recently retired from the Veterans Bureau and is being paid a good, under the circumstances, salary as Medical Director. Licensed in the District May 21, 1937.

"'14. Whereas the officers of the Corporation express a desire to cooperate with the Medical Society of the District of Columbia, it is a fact that in the beginning and at all times there has been no real effort made to apprise the Medical Society of the District of Columbia of what they were undertaking. They have not considered officially the Medical Society of the District of Columbia during the formative stage of their organization. On the contrary there seems to have been a desire to keep the matter confidential.

"'15. Meeting with officials of the American Medical Association on two separate occasions convinces us that the national organization is keenly interested in the whole affair and is solicitous as to how we will consider its relation to us locally and what policy the Medical Society of the District of Columbia will adopt in regard to it.

"'16. What might be done.

"'1. Consider it unethical.

"'2. Control our own members in terms of the ethical requirements of our own constitution and by-laws.

"'3. Offer a substitute plan of our own.

"'4. Cope with the situation in the courts in terms of the local healing arts practice act.

"'17. Your committee met with the board of directors of Group Health Association, Inc. The attitude of organized medicine in regard to the medical ethics in matters of this kind was fully presented to them. Quotations were read to them from the code of ethics of the American Medical Association and other relevant facts were presented. The only reply was made by a Mr. Loomis, member of the board of directors, to the effect that he hoped that the Medical Society would see fit to withhold final judgment until Group Health Association, Inc. had been in actual operation a sufficient length of time to practically demonstrate its purpose and its relation to the community and to the medical profession of the District of Columbia.'

"Dr. H. C. Macatee elucidated the various points that had been brought up before the Home Owners Loan Corporation committee on the preceding evening at its home on the 8th floor of the old Acacia Building, First and Indiana Avenue, Northwest. He cited particularly a statement by one of the officers to the effect that if and when the project became large enough to include all of the Government workers of the city of Washington, that is, its scope raised to the nth degree, quoting him exactly, there would be room enough for all of the physicians practicing in Washington, and it was freely intimated that they all could be placed presumably on a salary basis, working for the project.

"Dr. Macatee, in continuing, read an excerpt from the latest issue of the Principles of Medical Ethics of the American Medical Association, having to do with the definition of free choice of physicians, as follows:

"'The phrase "free choice of physicians" as applied to contract practice is defined to mean that degree of freedom in choosing a physician which can be exercised under usual conditions of employment between patient and physician when no third party had a valid interest to intervene. The intervention of a third party who has a valid interest and who intervenes does not per se cause a contract to be unethical. A "valid interest" is one where, by law or necessity, a third party is legally responsible either for cost of care or for indemnity. "Intervention" is the voluntary assumption of partial or full financial responsibility for

medical care. Intervention shall not proscribe endeavor by component or constituent medical societies to maintain high quality of service rendered by members serving under approved sickness service agreements between such societies and governmental boards or bureaus and approved by the respective societies.'

"The ambiguity of the situation was immediately apparent.

"Dr. Macatee said that he certainly did not read this at the time of the meeting with the H.O.L.C. unit. He did, however, read on that occasion extensively from the Principles of Medical Ethics under which the medical profession is bound, showing that the project as at present constituted could not be expected to be approved by the Medical Society of the District of Columbia, the local unit of the American Medical Association.

"Dr. Macatee was rather inclined to think that there should be no hasty action taken at this time and he would recommend that the four possible solutions as prepared by the subcomittee be not read before the Medical Society. He too thought that it might be possible to bring some accord with the Group Health Association."

Then in connection with the visit of Dr. Woodward and Dr. Leland the minutes record as follows:

"The secretary explained just what had been suggested by Drs. William C. Woodward and R. G. Leland at the time of their visit. It would seem that Dr. Woodward would advise quo warranto proceedings, which proceedings would require a district attorney or United States Attorney for the District of Columbia, who at least was not hostile, that the suit would be filed in his name. He saw many difficulties in following this up. Dr. Leland had given a sketchy verbal outline of a plan whereby a pool of money should be created and this could be built up by either the people in the lower income brackets or even in the higher brackets, and from this pool the care of the sick could be financed."

By Mr. Leahy:

Q. Doctor, did you state that the report was finally made to the District Medical Society a couple of days later?

A. I did; July 29, 1937.

Q. I am going to show you on page 34 a motion and ask you if you can identify that for us and explain what it is.

However, I should conclude the paragraph which I just read with reference to Dr. Woodward and Dr. Leland and their visit (reading):

"The secretary stated that the very next morning after the meeting he wrote to Dr. Leland asking for full details of this plan. Up to date he had received no reply. The secretary opined that the American Medical Association authorities certainly did not have any definite knowledge as to how to proceed in combating the situation that was confronting the Medical Society of the District of Columbia.

"The secretary said he was quite sure that he was in accord with everything that Dr. Reed wanted passed. He would make two motions if acceptable to Dr. Reed:

"1. That a special meeting of the Medical Society of the District of Columbia be called for Thursday, July 29, 1937, at 8 p. m.

"2. That a recommendation be made that the president of the Society appoint a special committee to consider the entire matter with a view to bringing accord, if possible, with Group Health Association, Inc.

"In view of the fact that many of the members thought that report should be made back to the Executive Committee Dr. Reed's motion was finally made to the effect that the Chairman of the Executive Committee appoint three of its members to act as a subcommittee, they to add two members of their selection from the Society at large for the purpose of further studying Group Health Association, Inc., with a view of bringing back to the Executive Committee a solution concerning what the Society's attitude should be toward Group Health Association, Inc. and to report to the Executive Committee at its next regular meeting. A motion was made concerning the registered letter that was to be sent out."

That was to a list of organizations, groups and individuals. It was seconded and adopted.

The minutes of the special meeting of the Medical Society of July 29, 1937 (Gov. Ex. 37) set forth the transactions of that meeting.

Defense counsel read from the minutes of July 29, 1937 (Gov. Ex. 37) as follows:

I am not going to repeat the report which I just read to you as the report of Dr. McGovern to the Executive Com-

mittee, which contains what he considered to be and stated as the known facts, some sixteen, which the committee at that time knew about G.H.A. The Executive Committee presented its report, and I am not going to reread that. Then there was discussion by Dr. Thompson, Dr. Hooe, Dr. Sprigg, and then Dr. McGovern was called upon to discuss the question. He stated (reading):

"that he was the chairman of the subcommittee of the Executive Committee that investigated this matter thus far. He brought out the fact that the purpose of this meeting tonight was to inform the membership of the situation and to familiarize them with the facts obtained to date with an idea of turning it over in the minds of the membership and arriving at some conclusion as to how the Society should act in the matter. He felt that it was apparent from the report that the Group Health Association was not willing to 'come clean.' It was specifically stated that Mr. Penniman, its president, refused to comply in writing to an official communication addressed to him from the Society. In that letter four specific requests were made: that they submit copy of any contract they may have between the Group Health Association and the Home Owners Loan Corporation with the Federal Home Loan Bank Board; copy of their constitution and by-laws; and any contract that may be in existence in relation to the members of this corporation; and any other matter that would be of importance to the Medical Society. Dr. McGovern pointed out that the communication was sent by registered mail. Mr. Penniman called him by telephone asking that he have luncheon with him where these matters could be discussed. After consulting with officials of the Society Dr. McGovern accepted the invitation to meet Mr. Penniman at luncheon at the Raleigh Hotel. Dr. McGovern made it emphatic that he was not authorized to commit the Society in any way. Mr. Penniman was willing to give some of the information desired, but when asked for the contract between the Group Health Association and the Federal Home Loan Bank Board, he refused, stating that the Medical Society had no more right to ask for that than they would to go down to Garfinckel's department store and ask to see a contract that the store had with an express company, for instance. Dr. McGovern felt that it was definite that they had some kind of contract and they are not desirous that

anybody should see it. In this connection he would add that the American Medical Association, through Dr. W. C. Woodward, tried diligently, spending a whole day in the building of the Home Owners Loan Corporation, going from office to office, trying to get a glance at the contract, without success. Dr. McGovern felt that the contract itself did not interest the Medical Society as much as it did interest the A.M.A. If there is a connection between the Federal Home Loan Bank Board and the Group Health Association, and the Board is spending money, they are spending taxpayers' money which makes it a national entity. As far as the panel of doctors is concerned, Mr. Penniman said he did not think it was appropriate for the Medical Society to have a list of the panel of physicians who have already been employed. He added that it is a well known fact that members of the Society have been approached. It also is a known fact that doctors have been asked to come in from the outside; that Dr. Brown has talked to them.

"Dr. McGovern said that property had already been leased for the housing of the clinic on I street, between 13th and 14th Streets. There was no doubt in his mind that the lay members of the board of directors of the Group Health Association are thoroughly convinced that they are doing a splendid thing for their employees. He was further convinced that they are not doing anything that might be considered unethical by them.

"Dr. McGovern called attention to an article which appeared in the Evening Star, in which it was announced that Senator Lewis had introduced a resolution in the Senate of the United States to provide medical care for the needy and the stricken with illness, etc."

I will not read the resolution which Dr. McGovern read, because it is not particularly interesting to us at this time. Dr. McGovern continued further with reference to Senator Lewis' speech at Atlantic City, New Jersey, at the convention, and Dr. Willson spoke, and then Dr. McGovern stated (reading further):

"that in the articles of incorporation they are going to give complete medical care and hospitalization. It could not be found out as to how they plan to do that. He pointed out that it is incorporated to include all Federal employees, except Army and Navy. He thought possibly they would have the free use of the local hospitals.

"At this point Dr. Charles E. Fierst, of Silver Spring, Maryland, addressed the Society."

"Dr. H. C. Macatee was recognized. He reiterated the plea of the chairman of the Executive Committee that if any members had ideas on this subject, or information about it, they should submit it to the committee for investigation. He said he would like to express his personal feeling about this matter for whatever value it may have. He was of the opinion that the Medical Society should not take its attitude based on the idea that there are certain scurrilous people who are trying to do a scurrilous thing to the Medical Society and doing it in an underhanded, scheming way. It was his impression, gained from contact with certain individuals, that they are highly intelligent people who have profoundly studied this subject, who are aware of all the social currents flowing through the country with respect to the relation to the medical profession and the people. They are aware of what has been done elsewhere and the results. 'My feeling is that this is a group of responsible, honest, rather public-spirited people, who are undertaking to do something for the benefit of their associates in office. They are convinced and have secured what they call competent legal advice that they are on secure legal ground. They have by reason of their knowledge of similar projects elsewhere become convinced that wherever such organizations spring up they almost consistently receive the antagonism and the animosty of the local medical profession.'

"Dr. Macatee added that he was of the opinion that their desire to avoid publicity in this matter was due to their knowledge of that fact. So far as Dr. Henry Rolf Brown was concerned, Dr. Macatee stated that he has had a distinguished service in the Veterans Bureau where he was highly esteemed. He was retired on account of age and feels that he is not old enough to be put on the shelf. Dr. Brown has been detached from the organized profession for a long time. He (Dr. Macatee) said he for one did not blame Dr. Brown for taking the position.

"Dr. Macatee, continuing, stated that they had evidently obtained advice from the Twentieth Century Foundation and are perfectly aware that similar organizations, such as the Endicott-Johnson Medical Service, which was fought tooth and nail by the County and New York State Medical

Society; also the Ross-Loos clinic of Los Angeles, which was likewise fought tooth and nail by the California organized medicine to the point that the members of that outfit were expelled from membership and then by court order were instated, were in operation. It was because of all these facts that the Executive Committee was recommended that this matter be recommitted for further study as to what will be wise for the membership as well as the public.

"Dr. Macatee added that there is now available a list of corporations and organizations and persons employing physicians in a contractual relationship, prepared under provisions of the constitution and by-laws. He urged the members to take the list and examine it carefully, and familiarize themselves with its contents.

By Mr. Leahy:

Q. Doctor, I want to show you on page 41, the first paragraph thereon, and ask you whether, so far as any knowledge you have is concerned, that is the first information of a Doctor Selders which came to the District Society or any of its members.

A. So far as I know, that is.

Mr. Leahy: That is at the special meeting of July 29, 1937, when Dr. Charles E. Fierst, of Silver Spring, Maryland, addressed the Society (reading):

"He said that last evening he overheard a conversation that took place in one of the drug stores in Silver Spring. A man represented himself as a surgeon of this organization and showed the clerk a list of instruments and equipment procured for a clinic to be opened in the 'Evans Electrical Building.' This man told the drug store employee that any major surgery that would be done would be performed in the local hospitals of Washington. Minor surgery would be taken care of in the clinic. By inquiry of the employee of the drug store, Dr. Fierst stated he obtained the name of this man as Dr. Raymond E. Selders, 2445 15th Street, N. W., Telephone: Adams 5302; that he was formerly from Massachusetts. Dr. Selders applied for a courtesy card at the drug store."

Then there was further discussion by other members with reference to Dr. Macatee's remarks and Dr. McGovern's remarks, and at this point Dr. Sprigg re-read the recom-

mendations of the Executive Committee as amended, as follows (reading):

"That the chairman of the Executive Committee appoint three of its members to act as a subcommittee, they to add two members of their selection from the society at large, for the purpose of further studying the Group Health Association, Inc., with a view of bringing back to the Executive Committee a solution concerning what the society's attitude should be to the above Group Health Association, Inc., and to report to the Executive Committee, subject to the call of the chairman.

"Duly seconded and adopted."

I was chairman of the committee which was appointed that evening. No other action than the appointment of the committee to study the matter was taken at the July 29, 1937, meeting. The committee functioned until September 27, 1937, when it made its final report.

While I was away on vacation a meeting of the Executive Committee was had on September 8, 1937. Defense counsel read the minutes of the Executive Committee meeting of September 8, 1937 (Gov. Ex. 37) to the jury as follows:

"It was stated that during Dr. Macatee's absence from the city during the month of August, owing to the clamor for action that had been set up by certain society members, it was incumbent upon the committee to hold a meeting. At a meeting which was held in the office of Dr. Thomas A. Groover, it was adopted that Drs. Macatee and McGovern be duly appointed by the Society at large as members of the subcommittee."

The following statement was made as the statement of the committee (reading:)

"1. That Group Health Association is unethical and that the participation in it by any member of the Medical Society of the District of Columbia would render him or her subject to disciplinary action by the Society.

"2. Your committee at this time has no definite recommendation to make with respect to combating the activities of Group Health Association other than as embodied by implication in the preceding paragraph.

"3. It is the opinion of your committee that the Medical Society of the District of Columbia should maintain close contact through the chairman of this committee with the American Medical Association in an effort to formulate a suitable and effective policy with respect to combating the activities of Group Health Association.

"It was explained that Dr. Macatee has been duly notified of the committee's activities during his absence and also that it was the desire of the committee to hold a meeting just previous to the meeting of the Executive Committee on this evening. Dr. Macatee had stated over the telephone that this afternoon was very well taken up and it would be impossible for him to be present.

"Upon motion duly seconded the Executive Committee unanimously accepted the report of the subcommittee."

Then Dr. McGovern was called upon to speak, as well as other physicians, and then Dr. Macatee was recognized.

"He summed up briefly his stand in the matter, stating that before accepting the subcommittee appointment he definitely told Dr. Sprigg that he was going to be out of town for the whole month of August, and he thought that someone else should serve. Upon insistence he accepted. He was of the opinion that in view of the committee seeing fit to meet this evening and on other occasions during his absence, and having brought in a report without his presence, that he should resign and that his resignation from the committee should be immediately accepted.

"Dr. Ruffin and others expressed the hope that Dr. Macatee would not deprive the Executive Committee and the Society of his services which were deemed most valuable in the revamping of the report which Dr. Sprigg and others thought should be in such a form as to be suitable to be sent to each member of the Society and Members of Congress as a dignified expression of organized medicine's stand in the protection of the health of the individual.

"Upon motion duly made and finally adopted the committee was to be continued with Dr. Macatee chairman and the report to be made back to the Executive Committee with a statement involving specifically the violations of the Code of Ethics and the reasons for opposition to the group plan on the basis of the health of the individuals who would be subscribers.

"That portion of Dr. Ruffin's proposal which would refer the matter back to the American Medical Association was stricken out.

"Dr. Macatee announced his willingness to continue and do anything within his power to aid the committee."

Then several doctors talked and further instructions were given with reference to other matters which I do not think are of interest here.

Although a report was adopted at the September 8 meeting, the whole matter was recommitted to the committee, and that report was superseded by another report which the subcommittee submitted to the Executive Committee on September 27. The report adopted on September 27, 1937, was the final report of the committee and supplanted the preliminary report made on September 8. The final report read as follows (Gov. Ex. 37):

"At a special meeting of the Medical Society of the District of Columbia held July 29, 1937, the membership was advised of all the facts that the Executive Committee had been able to gather respecting the purposes, proposed methods, and progress of the Corporation composed of employees of the Home Owners Loan Corporation now in process of organization, the object of which is to provide complete medical, surgical and hospital care for its members and their dependents upon a prepayment plan of financial support through membership dues. The professional services offered by the Corporation are to be supplied by a full-time salaried staff of medical and other technical employees. The name of the organization is Group Health Association, Inc., of the Home Owners Loan Corporation.

"The Executive Committee recommended at the special meeting that the Society authorize further study of the subject by the Committee in order to enable it to report suitable recommendations to the Society looking to the formal adoption of an official attitude toward this proposed new type of medical practice.

"Such an expression of the Society's attitude is necessary for the guidance of our membership, both with respect to possible employment by the corporation and with respect to professional relationships to its medical and technical employees when and if it shall have begun to function.

"The Executive Committee finds: First, that employment by or professional relations with the Group Health Asso-

ciation, Incorporated, on the part of our members would be conditional upon approval of the organization by the Society as required by Chapter IX, Article III, section 2, of the Constitution; that no application has been made by any member or by the organization itself for such approval; and that consequently there has been no submission of the data required for approval to the Compensation, Contract and Industrial Medicine Committee of the Society.

"The Committee finds: Second, that the conditions of rendering the medical and surgical service offered by Group Health Association, Incorporated, as set forth in such written promulgations of the organization the Committee has been able to see and as indicated verbally by officers of the corporation, appear to be inconsistent with the criteria for an acceptable form of contract practice as set forth in Chapter III, Article VI, Section 3 of the Principles of Medical Ethics of the American Medical Association, by which we are obliged to be guided. In particular it would appear that at least two of the criteria would necessarily be violated, viz.: '1. Where there is solicitation of patients, directly or indirectly'; and '3. When free choice of a physician is prevented.' In the first instance, it is obvious that the solicitation of employees of the H. O. L. C. to take membership in Group Health Association, Incorporated, is an effort to entice many away from medical relationships already formed to the medical personnel of the corporation. This effort would raise the question whether a further criterion of an acceptable contract is violated, viz.: '4. When there is interference with reasonable competition in a community.'

"However, the criteria above quoted must be applied in the light of experience, and we are required by the same Principles of Ethics to exercise prudence in forming opinions: 'Judgment should not be obscured by immediate, temporary or local results.' In any form or instance of contract practice 'The decision as to its ethical or unethical nature must be based on the ultimate effect for good or ill on the people as a whole.'

"The Executive Committee, therefore, recommends the adoption of the following:

"Resolved, That a final expression of the attitude of the Medical Society toward the acceptability of any cooperative medical service organization as an approved agency for the employment of members is manifestly impossible without the submission of all related data as a basis for approval,

and manifestly undesirable when information is lacking as to whether any such group will ever become operative; and

"RESOLVED, That the membership be reminded of the requirements of Chapter IX, Article III, Section 2 of the Constitution for their guidance with respect to Group Health Association, Incorporated, of the H. O. L. C.; and

"RESOLVED, That the Medical Society recognizes a growing desire in Washington for some feasible plan of cooperative group medical service on a prepayment basis; that it recognizes the value of such an arrangement for many people of limited incomes; and that, having already provided a means in the Health Security Administration, for the people without ready money to secure medical service on a postpayment plan, it is willing to collaborate with appropriate, responsible groups to devise methods for group prepaid medical service mutually acceptable to the two essential parties to such an agreement, viz.: the group needing and proposing to pay for the service and the group capable of furnishing it; and

"RESOLVED, That if hereafter it shall appear necessary or desirable, the Board of Medical Supervisors of the District of Columbia be requested to determine, by judicial decision if necessary, whether the operation of Group Health Association, Incorporated, or any similar organization, is or will be in conformity with the Healing Arts Practice Act for the District of Columbia."

"Dr. Macatee, upon concluding reading, stated that the Journal of the American Medical Association would publish in its issue of October 2, 1937, a detailed analysis of the Group Health Association, Inc., pointing out weak points from a legal viewpoint. It began with the statement that Title 5, Chapter 5 of the District Code was taken advantage of, which had to do with the mutual welfare of individuals in organizations. It was clear that the Government was definitely embarking in the insurance business and that the check-off from the Government payroll would have all of the evil points that were included in check-off in the factories for union dues. The American Medical Association's statement would cover 4 or 5 pages in the Journal. It was emphasized that this material was not for release until September 29. Dr. Macatee stated that it was his view that despite this article appearing in the A. M. A. Journal, that there should be no hesitancy in adopting the report of the Subcommittee."

The report was unanimously adopted.

Health Security Administration is an eleemosynary organization which investigates applicants for medical charity and arranges for their hospitalization in clinics, and also provides a means by which they may pay their own way or budget out the expenses of their hospitalization after the services have been rendered. No information, over and above that had previously, was had on September 27, 1937, by the Society, as no communications had been received in any shape or form from any member of Group Health or from any of the members of its Board of Trustees.

The report of September 27, was incorporated in a report of the committee to the Society on its meeting on October 6, 1937. Between the special meeting of the Medical Society of July 29 and the meeting of October 6 nothing was done by the Society with relation to Group Health.

Defense counsel read from the minutes of the meeting of the Medical Society of October 6, 1937 (Gov. Ex. 37) as follows:

"Dr. Sprigg, continuing, stated that for the information of the membership he would report that the Executive Committee met four times during the summer for the purpose of studying questions of the organization which has been featured by the Home Owners Loan Corporation. He pointed out that officials of the American Medical Association lent their aid: Dr. W. C. Woodward, Director of the Bureau of Legal Medicine and Legislation, and Dr. R. G. Leland, Director of the Bureau of Medical Economics, discussed the matter before the subcommittee; and Dr. Olin West, Secretary, discussed the matter with certain members of the Society. All discussing this question were thoroughly opposed to the plan as presented in toto."

And the following resolutions are the results of these deliberations concerning Group Health Association, Inc. And then follows this same resolution which I have read to you. I am not going to take time to read it. Then, upon motion duly seconded, and adopted, the recommendations of the Executive Committee were considered seriatum.

"Dr. Thomas A. Groover was recognized. He stated that if there was no objection he would like to introduce a substitute for the foregoing resolutions. No objections were made. He presented the following:

"WHEREAS, The Bureau of Legal Medicine and Legislation of the American Medical Association has prepared and

published a comprehensive report on the activities of Group Health Association, Incorporated; and

"WHEREAS, The Medical Society of the District of Columbia is in full accord with the content of said report, both as to the established facts set forth therein and the implications drawn therefrom; therefore, be it

"RESOLVED, That the Medical Society of the District of Columbia cause a copy of said report to be sent to each of its members as an indication of its future policies with respect to combating the activities of said Group Health Association and also with respect to the ethical responsibilities of the Medical Society of the District of Columbia and of its individual members.

"Dr. Groover moved the adoption of these substitute resolutions. Seconded by Dr. F. X. McGovern.

"In discussion of the subject, Dr. Groover stated he wished to briefly state some of his reasons for proposing these substitute resolutions. He said:

" 'I wish briefly to state some of my reasons for proposing these substitute resolutions.

" 'I have grave doubts if this Medical Society alone can do a great deal toward combating Group Health Association, Incorporated, and believe that the most effective assistance and support it can invoke is that of the American Medical Association.

" 'The A. M. A. has manifested a keen interest in this problem and in the October 2nd issue of the Journal has caused to be published a comprehensive survey of it which I trust many of you read carefully.

" 'If you have, you must have noted that there are three dominant notes that run through it—the first being that Group Health Association is illegal; the second, that Group Health Association is unethical; and third, that the operation of Group Health Association would be inimical to the best interests of the medical profession and the public.

" 'As to the illegality of Group Health Association I am not personally qualified to speak, but I happen to know that the A. M. A. has made a careful study of this aspect of the question and it is their opinion that it is illegal. It would seem out of place at this time for this Society to commit itself to any plan of procedure such as that recommended by the Executive Committee in the event that legal action against Group Health Association is undertaken

later. Obviously any plan of procedure should be contingent upon the advice of counsel.

"'As to the ethical responsibilities of the Medical Society of the District of Columbia and its members the conclusion to be drawn from the A. M. A. report is inescapable. It says: "Physicians who sell their services to an organization like Group Health Association for resale to patients are certain to lose professional status." In contrast to this clear-cut statement the statements in the Executive Committee report are equivocal and quibbling for which I can find no justifiable excuse. The members of this Society I believe have a right to expect a definite unevasive expression from the Society as to their ethical responsibilities which is lacking in the Executive Committee report.

"'Finally it is the collective opinion of organized medicine that prepayment plans for medical care except under very special conditions are inimical to the best interests of the medical profession and the public. The quasi endorsement of any prepayment plan for a community like Washington as contained in the Executive Committee report might well alienate the support of the A. M. A. and prove disastrous to its influence and leadership. For these and other reasons which I will not go into I believe that any such commitment by this Society might very well prove to be exceedingly embarrassing."

Dr. Groover's substitute motion was adopted. The subcommittee of which I was chairman ceased to exist as its duties had been completed. Up to October 6, 1937, the Medical Society had taken no action other than is indicated in the minutes.

Q. Up to the meeting of October 6, 1937, what expression of an attitude of the Society had ever been adopted?

A. On June 1st the Executive Committee authorized the appointment of a subcommittee to find out facts; on June 24th a meeting with the officers of Group Health Association was had at the Medical Society Building to elicit facts; on July 26th a further meeting was had with the Board of Trustees of Group Health Association for further conference in the hope of reaching some accord with them. On July 29th all the facts obtained were submitted to the Medical Society at a special meeting, and the only action taken was the appointment of another committee to formulate a

policy for the Society to adopt officially; on October 6th, the Medical Society did adopt a policy as contained in the resolution presented by Dr. Groover. Those were the only actions taken by the Medical Society between those dates.

Mr. Leahy: I should like to draw the attention of the jury to one statement which is made on page 4 of the minutes of the meeting of October 6th, wherein after Dr. R. Arthur Hooe had been recognized he said:

"He referred to the constitution of the Society, as mentioned in Dr. Macatee's resolution, stating that there is a provision therein which makes it utterly impossible for a member of this society to engage with any corporation, group or individual without first submitting its verbal or written contract to the Compensation, Contract and Industrial Medicine Committee. He said when this fact was disclosed to the Group Health Association officials, their verbal reply was 'if that makes it impossible, if it is in violation of the ethics of the American Medical Association and your ethics, then why don't you and the American Medical Association change your ethics.' Dr. Hooe said the reply naturally was: 'Because you haven't sufficiently convinced us that we should change them with any good reason.'"

Mr. Leahy: And then there was a long speech by Dr. Horback, with which Dr. Hooe said he was in accord.

By Mr. Leahy:

Q. Now, Doctor, do you recall whether following the meeting of October 6th, and the adoption of this particular report of Dr. Groover, anything further was done in reference to Group Health Association during that month of October, 1937?

A. I know of nothing, sir.

Defense counsel read from the minutes of the Executive Committee meeting October 11, 1937 (Gov. Ex. 37) as follows:

"The recommendation was finally adopted that the American Medical Association authorities be communicated with and they also be asked to send to the Insurance Commissioners, the Commission on Licensure, the District of Co-

lumbia Commissioners, the United States District Attorney for the District of Columbia, and the Corporation Counsel, substances of the article that appeared in the October 2, 1937, issue of the Journal of the American Medical Association (organization section; p. 39B), and that if the American Medical Association refused or would not comply, then the Secretary send a reprint of said article to each of these officials."

Defense counsel read from the minutes of the meeting of the Medical Society of October 15, 1937 (Gov. Ex. 37) as follows:

At this particular meeting, according to the minutes which I am not going to read—because they deal with so many other matters, and so many doctors spoke—Dr. Wall, Dr. Sprigg, Dr. Jansen, Dr. Conklin, Dr. Hooe, Dr. Jacobs, Dr. Kirby, Dr. Holden, Dr. Hagner, Dr. Riddick, Dr. Davis, Dr. Sager, Dr. Chase, Dr. Christie, Dr. McLean, Dr. Parker, Dr. Alfaro, Dr. Templeton, Dr. Hooe, Dr. Groover,—until we come down to the seventh page of the minutes.

"Dr. W. M. Sprigg asked consent to read a letter addressed to the Boards of Directors of the various hospitals in the city. Consent was granted."

That letter is dated October 15th. He read the letter. He called attention to Chapter IX, Article 4, Section 1. The result of the action as to sending the letter was that the matter was held over, as I recall.

Mr. Lewin: Mr. Leahy, didn't he also refer to Section 5?

Mr. Leahy: Did he?

Mr. Lewin: Didn't he start out with Section 5 and quote it?

Mr. Leahy: "The Medical Society of the District of Columbia desires to call your attention to Chapter IX, Article IV, Section 5, of the Constitution as follows", quoting it; and that matter was held over for further discussion. This was at the meeting of October 15, 1937.

Defense counsel read from the minutes of the Medical Society meeting of November 3, 1937 (Gov. Ex. 37) as follows:

This is November 3rd. There are many things in here which have no relation whatsoever to the matter at hand. On the bottom of page 2, however, Dr. Sprigg, Chairman of the Executive Committee, was recognized. He presented

the following recommendation from the Executive Committee, which is the one I just drew your attention to, to the effect that the American Medical Association authorities be communicated with and asked to send to the various public officials of the District of Columbia substances of the article which appeared in the October 2nd, 1937, issue of the Journal. Dr. Sprigg made the motion that the recommendation as read be adopted. No. 1 I have just brought to your attention. Second, Dr. William J. Stanton was then recognized and he offered a substitute for the recommendation of the Executive Committee. Now, that is a long resolution and insomuch as it was not adopted I will not take your time to read it.

Motion was made that the foregoing resolution be adopted, and it was seconded. Then there follows a long discussion between Dr. Stanton, Dr. Sprigg, Dr. Smith——

"Resolved, That the Executive Committee of the Medical Society of the District of Columbia is hereby authorized and directed to take such steps as may be necessary, first, through the American Medical Association and if that fails, second, through its own initiative to inaugurate a program of information through the state medical associations and other sources of the dangers of lowering the standards of medical care to be given government employees in the Home Owners Loan Corporation organization and other government agencies as found in the rules of the Group Health Association, Inc., and many other reasons why it is contrary to sound public policy."

Then follows another discussion between Dr. Sprigg, Dr. Stanton, Dr. Prentiss Willson, Dr. Hooe, Dr. Caulfield, Dr. McLeod, Dr. Wilkinson, Dr. Sager, Dr. Christie, Dr. Ruffin, Dr. Stanton again, and Dr. Willson's motion was finally adopted. That motion was that a committee should be appointed to retire to draw up a resolution. The committee appointed was Dr. Stanton, Dr. Ruffin, and Dr. McGovern.

"Later in the evening Dr. Stanton made the following report of the committee's deliberations, presenting the resolutions:

"That the President of the Medical Society of the District of Columbia appoint a committee of two members to go to Chicago as promptly as practicable and lay before

the proper officials of the American Medical Association the views of this Society with regard to the activities of Group Health Association, Incorporated, including:

"1. That inasmuch as the movement threatens to be nation-wide in its scope, and affect every component organization of the American Medical Association, it is the duty of the American Medical Association to oppose immediately with all its might this entering and possibly illegal wedge to the socialization of medicine.

"2. That in view of the tremendous import of the Group Health Association movement to the membership of the Medical Society of the District of Columbia and also to the profession at large and to the public, it is the opinion of the Medical Society of the District of Columbia that it is the duty of the American Medical Association to combat vigorously Group Health Association, Incorporated.

"3. That the Medical Society of the District of Columbia waives any question of regional interference by the American Medical Association.

"4. That the American Medical Association give a definite and immediate expression of its intended action in this matter.

"Upon motion, duly seconded, the foregoing resolutions submitted by the special committee were adopted."

I do not know of any other action taken at the November 3rd meeting other than to authorize Doctors McGovern and Hooe to go to Chicago and see the AMA.

Defense counsel then read from the minutes of the Medical Society meeting of November 3, 1937 (Gov. Ex. 37), as follows:

Now, at that same meeting of November 3rd, 1937, there was another resolution adopted which I wish to draw the attention of the jury to. Oh, there were many offered; much talk—until we come down to the twelfth page.

"Dr. Prentiss Willson would inquire if the foregoing was in lieu of the recommendation concerning the sending of a letter to the Board of Directors and medical staffs of the local hospitals, as published through the membership on the agenda."

That is the Dr. Sprigg letter I called attention to at the earlier meeting.

"He said he intended to move a substitute motion for the letter which appeared on the agenda. If the Society approved the motion proposed by Dr. Sprigg it would be inexpedient to send the letter out at the present time. He was of the opinion that the Hospital Committee, composed of members of the Society serving on hospital staffs in Washington would be a more suitable committee to handle the matter. He offered the following substitute:

"Whereas, the Medical Society of the District of Columbia has an apparent means of hindering the successful operation of Group Health Association, Inc., if it can prevent patients of physicians in its employ being received in the local private hospitals; and

"Whereas, the Medical Society of the District of Columbia has no direct control over the policies of such hospitals as determined by their lay boards of directors, except through its control of its own members serving on their medical staffs; and

"Whereas, Conflicts between the Medical Society of the District of Columbia and any local hospitals arising from an attempt to enforce the provisions of Chapter IX, Article IV, Section 5, of its Constitution should be assiduously avoided, if possible, because of the unfavorable publicity that would accrue to its own members; therefore, be it

"Resolved, That the Hospital Committee be, and is hereby, directed to give careful study and consideration to all phases of this subject and report back to the Society, at the earliest practicable date, its recommendations as to the best way of bringing this question to the attention of the medical boards and boards of directors of the various local hospitals in such a manner as to insure the maximum amount of practical accomplishment with the minimum amount of friction and conflict."

Mr. Leahy: This was afterwards adopted; the minutes show it was adopted, and the matter referred to the Hospital Committee.

The Sprigg letter, which this resolution was presented in order to supplant, was not sent as the Willson resolution stopped it. I have been connected with the Washington hospitals for forty-one years.

Q. Have you any knowledge now of any acts done by the District Medical Society in any attempt to control the policies of any hospital in the District of Columbia, other than what is disclosed in the minutes of the meetings of the District Society, as read?

The Witness: Nothing was done by the Medical Society other than as disclosed by the minutes.

The Medical Society never on any occasion undertook to do anything to interfere with the reception by the local hospitals of patients arising from Group Health.

I have been connected with Garfield Hospital since 1900, and ever since I have been connected with its staff it has had a rule that only those who have been given privileges can exercise and practice their profession within the hospital, and the same is true of the other Washington hospitals. The general considerations that apply to the granting of hospital privileges I will outline as follows:

There is required a formal application by any physician who desires courtesy privileges, stating his name, scope of his education, training, and special aptitude, giving references to those who personally know his attainments as endorsers. This material is referred to that section of the medical staff involved in the type of practices as to which the applying physician desires courtesy privileges, and upon their opinion is based the answer of whether or not the application will be endorsed, and it is a rule that all members of the attending staff must endorse the application. The application then comes to the advisory committee, of which I am chairman, whereupon these facts are considered, and that committee recommends to the board of directors the appointment to the courtesy staff of the applicant or not. The board of directors then takes its own independent action on the matter, and the ultimate appointment depends upon the board of directors.

In Garfield Hospital from January, 1937, to December 20, 1938, there has been no change in the policy of the hospital with respect to an applicant being a member in his local medical society, but the fact of membership stands as a substantial bit of evidence concerning his acceptability, but his nonmembership is not a bar to courtesy privileges in Garfield Hospital, and there were other than local Society members on the Garfield staff at that time.

While I was at Garfield Hospital Dr. Raymond E. Selders made an application for privileges shortly after Group Health came into operation, or about November or December of 1937. The application took the same route of any other application. Dr. Selders was given temporary privileges under the rule that an applicant would be given such privileges pending action on his application, and his application finally was denied by the Board of Directors. In granting Dr. Selders privileges during the period his application was pending we followed the general rule applicable to all applicants.

On January 25 of 1938, on a report from the surgical staff, Dr. Selders' temporary privileges were withdrawn.

Gov. Ex. 485 has come to my attention since its date, December 3, 1937, but I know nothing of its origin. I do not recall the contents of Gov. Ex. 487. Action was taken by the Board of Directors at a meeting at which I was present on March 28, 1938. The letter correctly sets forth the action which was taken.

Defense counsel read Gov. Ex. 487 to the jury as follows:

The letter is U. S. Exhibit No. 487 dated December 28, 1937, from Dr. Eisenman, Superintendent, to Mr. Aspinwall, and it says (reading):

"That pending the settlement of the question as to the ethical status of Group Health Association, Inc., and pending further study of the professional qualifications of Dr. Raymond E. Selders that he be not accorded courtesy privileges at Garfield Memorial Hospital except, of course, in a real emergency."

That is the meeting of the board of directors of March 22, 1938. (Reading):

"The president, in reviewing the proceedings, stated:

"Our final connection with Group Health Association was the application of Dr. Selders for surgical privileges. The temporary privilege awaiting action on the application and the withdrawal of these privileges on recommendation of the Medical Staff as noted in the resolution of the Executive Committee meeting on December 28, 1937, awaiting legality of Group Health Association. The actual disqualification of Dr. Selders' application was by the board of directors at meeting on January 25, 1938, in which the min-

utes of the Executive Committee meeting of December 28, 1937, were read.

"In approving these minutes the board desires to state that in denying privileges to the courtesy staff of the hospital to Dr. Raymond E. Selders on the recommendation of the Medical Staff of the Hospital the action was pending the legality of the organization who employed Dr. Selders."

The witness was removed from the stand for the identification of an exhibit (Def. Ex. 42).

WILLIAM RICHARDS CASTLE, a witness for the defendants.

Direct examination:

I have resided in Washington since 1918. I was employed first in the Red Cross for a year, and then in the State Department from the beginning of 1919 until 1933. I was in the European Division of the State Department for a while, and then I was Assistant Secretary and finally Undersecretary of State, and I recognize the letter marked Def. Ex. 42 as on my stationery and bearing my signature; I personally forwarded this letter to the addressee, Dr. Eisenman, but I do not have any other correspondence in relation to this letter. I thought it was of no importance at the moment and threw it away.

DR. HENRY C. MACATEE, a witness for the defendants.

Direct examination—resumed:

A letter marked Def. Ex. 42 came to my attention as a member of the Board of Directors of Garfield Hospital. Dr. Selders was never afforded privileges at Garfield Hospital except temporary privileges until his application was denied officially. The Castle letter (Def. Ex. 42) had a definitely adverse effect upon the Board of Directors' determination with reference to whether or not Dr. Selders was qualified for privileges at Garfield Hospital. Mr. Castle was a member of the Board of Directors of Garfield Hospital.

Def. Ex. 42 received and read to jury as follows:

This is on the stationery of W. R. Castle. It is dated March 30, 1938, and addressed to Dr. Francis J. Eisenman, Garfield Hospital (reading):

"My dear Dr. Eisenman:

I wrote as I told you I would to Mr. Aldus Higgins in Worcester. He is the president of the Norton Company, is connected with various hospitals, and is, I believe, head of the Worcester Museum. Mr. Higgins is a very careful individual who would not write anything which he had not checked on pretty carefully. This is what he said:

'Dr. Selders was a surgical resident at Worcester City Hospital for one year, two years ago, at a salary of $900 and keep. We understood that he had graduated from a medical school in Oklahoma, had been in practice about seven years, and part of the time in Houston, Texas, where he had a hospital staff appointment. He then came to Pennsylvania State Medical School to take their P. G. course which requires one year at the school and one year of practical experience as a resident. His year at the hospital was a part of this procedure. His work at the City Hospital did not meet with the approval of the Superintendent as to the way he handled himself with internes, nor the approval of the surgical staff as to his accomplishments as a surgeon. The appointment accordingly was not continued after the first year.

'Our superintendent has a letter from one who claims to be his sister living in the South with the statement that she made sacrifices to educate Dr. Selders and that recently when she had turned to him for aid in her financial circumstances he had informed her that he did not care to hear from her again.'

Mr. Higgins adds that it is quite possible he may be able to get some more detailed information by consulting the doctors who knew him. He says, however, that it seems as though the above for the accuracy of which he vouches, would be bad enough to dispose of him both as a surgeon and a man.

If you would like me, however, to write Mr. Higgins and ask him to make further inquiries, I shall of course be glad to do so. We ought to realize, however, that if that

is done and Mr. Higgins consults various people, the inquiries are likely to be known.

Very sincerely, William R. Castle."

I remember the case of Miss Tew, as it came up for report and discussion in the advisory committee at Garfield Hospital, of which I am chairman. I prepared a document on the case on March 25, 1938, which I identify as Def. Ex. 43.

Def. Ex. 43 received and read to jury as follows:

"Regulation governing admission of patients to Garfield Memorial Hospital upon the application of physicians and surgeons not members of the courtesy staff.

The word 'emergency' is defined for the purpose of the use of the facilities of the hospital by physicians and surgeons not admitted to the courtesy staff of the hospital as some condition in which the life or safety of the patient is in danger except for some immediate intervention by the physician involved in the way of first aid, as in the case of hemorrhage, asphyxiation, or the like. In cases in which there is time for the formal posting of an operation the hospital holds that there is also time to secure the services of a surgeon who had been granted surgical privileges at the hospital, and that course of action will hereafter be required upon application for the admission of any patient by a physician or surgeon not of the courtesy staff.

Under the conditions stipulated members of Group Health Association will be admitted to the hospital just as any other person is admitted, subject to available space and the suitability of the patient in other respects.

Unanimously adopted by the Executive Staff at a special meeting held March 25, 1938.

H. C. Macatee, M. D., President, Medical Staff."

The original of this paper was sent to Mr. Aspinwall, President of the Board of Directors, on March 25, 1938.

The occasion of defining the word "emergency" was the admission of the Group Health patient Miss Tew into the hospital on the statement of Dr. Selders that it was an emergency case, when the staff took the position that it was not an emergency case. The purpose of the definition was to make the position of the hospital officially known

to all concerned in such cases, so that no such question would arise thereafter. Under the rule of Garfield Hospital one who did not enjoy courtesy privileges could treat an emergency case, and the purpose of the definition was to define and make clear what such an emergency case was.

After Justice Bailey's decision Garfield Hospital received two applications from members of the staff of Group Health some time in December of 1938. In passing on these applications there was no delay in the hospital beyond the necessary for the orderly process by which such applications were received and acted upon, with the result that the two applicants were admitted to courtesy privileges some time in December of 1938.

When Garfield Hospital receives requests for general surgical privileges on the courtesy staff, it avails itself of the facilities of the Washington Academy of Surgery, and it has been doing this for about ten years. In Dr. Selders' case his qualifications for surgical privileges were referred to the Washington Academy of Surgery, and that procedure was entirely in accord with the usual practice.

Gov. Ex. 450, dated January 31, 1938, which was a report from the Washington Academy of Surgery to the superintendent of Garfield Hospital, was then read to the jury, reporting that the Committee on Hospital Privileges recommended the disapproval of the applications of six doctors, including Dr. Selders, to do surgery, and then recommended the approval of about 45 others in various fields of surgery. Four of the doctors who were disapproved for surgical privileges were members of the District Medical Society. The principal minority report or report No. 1 of the Committee on Costs of Medical Care was approved by the American Medical Association. I made the motion for its adoption by the AMA, I think, in the year 1936.

The principal minority report of the Committee on Medical Care (Def. Ex. 45) was then read to the jury, as follows:

"I. The minority recommends that government competition in the practice of medicine be discontinued and that its activities be restricted (a) to the care of the indigent and those patients with diseases which can be cared for only in governmental institutions; (b) to the promotion of public health; (c) to the support of the medical departments of the Army and Navy, Coast and Geodetic Survey, and other government services which cannot because of their

nature or location be served by the general medical profession; and (d) to the care of veterans suffering from bona fide service—connected disabilities and diseases, except in the case of tuberculosis and nervous and mental diseases.

"II. The minority recommends that government care of the indigent be expanded with the ultimate object of relieving the medical profession of this burden.

"III. The minority joins with the Committee in recommending that the study, evaluation, and coordination of medical service be considered important functions for every state and local community, that agencies be formed to exercise these functions, and that the coordination of rural with urban services receive special attention.

"IV. The minority recommends that united attempts be made to restore the general practitioner to the central place in medical practice.

"V. The minority recommends that the corporate practice of medicine, financed through intermediary agencies, be vigorously and persistently opposed as being economically wasteful, inimical to a continued and sustained high quality of medical care, or unfair exploitation of the medical profession.

"VI. The minority recommends that methods be given careful trial which can rightly be fitted into our present institutions and agencies without interfering with the fundamentals of medical practice.

"VII. The minority recommends the development by state or county medical societies of plans for medical care."

Cross-examination.

By Mr. Lewin:

I was president of the staff of Garfield Hospital in the fall of 1937. The system of chiefs of staff does not prevail at Garfield, so a letter addressed to the chief of staff ordinarily would most likely come to me as president of the staff. Dr. Selders' application made on November 10, 1937, was referred to my committee. Dr. Selders' application disclosed his degrees in medicine and science, that he was a graduate of the University of Oklahoma Medical School in 1927; he was 40 years old, a member of the AMA and of the Harris County Medical Society; that he had had some teaching experience at the University of Oklahoma

and at various hospitals in Texas and at the Worcester City Hospital; that he had had courtesy staff privileges at various hospitals, including St. Joseph's Infirmary, the Methodist Hospital, and the Memorial Hospital in Houston, Texas; that he had contributed to medical literature and gives as references the names of three persons: United States Senator Lee of Oklahoma, Dr. Walter E. Lee, a surgeon of Philadelphia, and Dr. John T. Moore, of Houston, Texas.

I did not communicate with any of Dr. Selders' references and I do not know whether any members of my committee did or not.

Q. Now, Dr. Macatee, isn't it true that following receipt of that application you received a letter from Dr. Conklin, the secretary of the Medical Society of the District of Columbia, addressed to the chief of staff of Garfield Memorial Hospital, dated December 2, 1937 (Gov. Ex. 498)?

A. I have no independent knowledge of that letter.

Q. Such a letter as that is in evidence, Dr. Macatee, and it is addressed to the chief of staff. Would you ordinarily receive it?

A. Yes.

Q. And didn't it include a resolution adopted by the District Medical Society on December 1, 1937?

A. It did.

Q. And didn't that tell you this: that the District Medical Society has resolved, as a matter of educational policy, it strongly recommended that all hospitals, including yours, engaged in the teaching and training of residents, interns, and nurses, where possible, follow the recommendation of the American Medical Association regarding the constitution of their entire staffs, both the regular staff and the courtesy staff; that each member of that staff be a member of the American Medical Association and of the local societies here either in Washington or in near-by states?

Do you want to refresh your recollection? (Handing Gov. Ex. 498 to the witness.) Is that correct?

A. I didn't understand it was addressed as a question. That is the purport of the resolution.

Q. Yes. And wasn't that resolution taken up at the advisory committee of the medical staff of Garfield Memorial Hospital on December 6, 1937?

A. It was.

Q. And were you present at that time?

A. I don't know. There's nothing in that to——

Q. If you were, you would be the presiding officer, would you not?

A. I would, yes.

Q. And you would ordinarily be present at such meetings, would you not?

A. I would.

Q. Well, isn't it a fact that the secretary was directed by the advisory committee to reply to the communication that I just showed you from the District Medical Society?

A. That is what the minutes show.

Q. Yes. And wasn't the secretary a defendant in this case, Dr. F. X. McGovern?

A. He was.

Q. Yes. And as a matter of fact didn't he reply to Dr. Conklin by his letter dated January 3, 1938 (handing Gov. Ex. 484 to the witness)?

A. That exhibit indicates that he did, yes.

Q. And didn't he say that in reply to that letter, and enclosing the resolution, that he had been requested to advise Dr. Conklin and the Medical Society that the present policy in force at Garfield Hospital is in conformity with the provisions of that resolution?

A. That's what the letter states.

Q. That's what the letter states. And as far as you know, there is no question but that it states the correct fact; isn't that so?

A. Not with the emphasis on "present," as you put it.

A. Oh, really? Well, now, I thought I understood you to testify that you hadn't made any change with regard to that policy at Garfield Memorial Hospital throughout the two years 1937 and 1938.

A. That's my recollection of the fact.

Q. Is the defendant Warfield a member of your medical staff?

A. He is.

Q. Yes. Well, let me show you what purports to be his answers to a questionnaire given him by a committee of which he was chairman, a hospital committee of the District Medical Society, and see if this refreshes your recollection (Gov. Ex. 302):

"Question 8. Does your hospital require membership in the Medical Society of the District of Columbia as a qualification for appointments to its medical staff?"

And his answer, "Yes, or have applied."

A. That is the answer given there.

Q. Yes. And is that correct?

A. It is not.

Q. Question 9 is, "What percentage of the entire medical staff of your hospital are members of the Medical Society of the District of Columbia?"

And his answer is, "Over 75 per cent. All recent appointments."

That is the answer, isn't it?

A. That's the answer given there.

Q. Does that refresh your recollection that on or about that time, although only 75 per cent were then members of the District Medical Society, all recent appointments were required to be members?

A. That does not refresh my recollection.

Q. Would you deny that that was the fact?

A. I do.

Q. Would you deny that about this time, after the receipt of the resolution of the District Medical Society, you changed your policy to require all new, recent appointments to apply for membership in the District Medical Society?

A. Not within my recollection.

Q. It's simply a question of your recollection, is it?

A. Yes.

Q. Isn't it true also that Dr. Warfield, in answer to the question, "Is your hospital in sympathy with the policies of the Medical Society of the District of Columbia?" replied "Yes"?

A. That is his answer.

Q. And wasn't he speaking with regard to Group Health Association when that answer was made?

Mr. Leahy: I object. It calls for a conclusion of the witness.

By Mr. Lewin:

Q. And the policies of Group Health Association as appearing in the first question?

Mr. Leahy: I object.

The Court: Well, I don't know what the paper states, Mr. Lewin.

Mr. Lewin: Would you like to see it?

The Court: Unless this gentleman had something to do with the making of that paper or authorized the making of it, or something like that, I do not see how he is bound by that.

Mr. Lewin: No, I didn't mean to bind him. I was wondering if I might refresh his recollection as to these facts.

The Witness: I have no recollection of the paper.

By Mr. Lewin:

Q. Well, have you any recollection of the fact that your hospital was then in sympathy with the policies of the District Medical Society with regard to Group Health Association?

A. I couldn't make that statement then or now.

Q. Now, isn't it true that the superintendent of the Garfield Memorial Hospital referred Dr. Selders' application which I have just shown you to the Committee on Surgical Privileges (Gov. Ex. 485)?

A. Yes.

Q. And I believe you said that committee included Dr. Carr and Dr. McGovern and Dr. Charles Stanley White and Dr. Strine; am I correct?

A. Yes.

Q. Now, didn't he say, when he submitted this to them for their opinion, that "This," speaking of Selders' application, "is not a 'Run of Mine' case, and your action may be far-reaching. Information shows him"—that is Selders—"to have sufficient training for personal recognition, when compared with many now approved for courtesy privileges at Garfield Memorial Hospital. He is a member in good standing in A. M. A., County and State Medical Societies in Texas, and was returning from Massachusetts to Texas when offered the position with H. O. L. C."?

Doesn't he also say that "Should your recommendation be adverse, for other than personal qualifications, request they be stated, in order that the Board of Directors might have the benefit of your advice and counsel"? Am I correct?

A. That is what the letter states.

Q. Yes. Now, didn't you know that that had been done?

A. I did not.

Q. Was the surgical service, as far as you know, authorized to pass on this applicant for anything other than his personal qualifications?

A. My answer is that there is no regulation which directs the surgical service how it shall reach its conclusions with regard to applications.

Q. So if such a report were referred to you, you would think that you had the right to take into consideration anything whatever in addition to the man's personal standing or his professional capacity and qualifications?

A. I would think from that letter that I was put on notice to be especially careful to look into his qualifications fully.

Q. And you would think you were put on notice to do that because of his connection with Group Health Association, wouldn't you?

A. At that particular time I would think so, because of the very strong and very bitter publicity directed at the hospitals in the public press of this city.

Q. Now let me ask you whether Dr. McGovern, the secretary to your advisory committee, wasn't authorized and did not reply to Mr. Aspinwall with regard to this application of Dr. Selders.

A. He did.

Q. Now, was he speaking for the advisory committee of the medical staff when he so wrote?

A. He was.

Q. Therefore he was speaking for you, wasn't he, among others?

A. I am presiding officer of the advisory committee, without vote.

Q. And would you say he was speaking for you or he was not?

A. He was speaking for me because I was in sympathy with the action of the advisory committee.

Q. He was?

A. I think it was taken on good grounds.

Q. Yes. And were you in sympathy with the reasons which Dr. McGovern said prompted that resolution?

A. I was.

Q. All right. And wasn't this the resolution: "That pending the settlement of the question raised as to the ethical status of Group Health Association, Inc., and pending further study of the professional qualifications of Dr. Raymond E. Selders, that he be not granted courtesy priv-

ileges at Garfield Memorial Hospital, except of course in a real emergency"?

A. That is correct.

Q. Now, there you were delaying action pending the ethical status not of Dr. Selders but of the organization to which he belonged; am I correct?

A. That is one statement.

Q. Yes. And isn't this the reason that was given for it: "The reason prompting this recommendation is the fact that Group Health Association, Inc., a lay corporation, is considered unethical by the Medical Society of the District of Columbia, and its legality is being questioned"? Is that right?

A. That is the statement of the letter.

Q. Yes. And isn't it a fact within your knowledge that it was then considered unethical by the Medical Society of the District of Columbia?

A. That is true.

Q. Does not the reason continue that "Dr. Selders has been hired by Group Health Association as its surgeon. It is the opinion of the Advisory Committee that if the Garfield Hospital allows Dr. Selders courtesy privileges that it would be placed in the light of aiding and abetting Group Health Association, Inc."?

A. That is what the letter states.

Q. And that was your reason, was it not?

A. Yes.

Q. And that was your reason, although you had not yet communicated with Dr. Selders' references or heard any report on his professional qualifications?

Mr. Leahy: Now, wait a minute. That is a double-barreled question.

Mr. Lewin: All right, let us take it step by step.

Mr. Leahy: What do you mean by one? and then we'll get it.

By Mr. Lewin:

Q. At that time you hadn't communicated with his references, had you?

A. Indirectly we had.

Q. You mean you referred it to the Washington Academy of Surgery?

A. I do.

Q. When did you do that?

A. I don't know.

Q. Well, did you do it before or after this letter?

A. The rule was to require them—the applications as they came in.

Q. Did you refer it to the Washington Academy of Surgery on December 6, 1937 (exhibiting a photostat to the witness)?

A. We did.

Q. And had you heard from the Washington Academy of Surgery?

Mr. Leahy: Now, pardon me. Would you just give me the date of the letter you are referring to, Mr. Lewin?

Mr. Lewin: Yes, I will give you both references. The reference was December 6, and the letter I have examined him about was December 17.

By Mr. Lewin:

Q. Had you had any response from the Washington Academy of Surgery at that time?

A. The response from the Washington Academy of Surgery would come to the surgical group of the staff and not to the advisory committee.

Q. As a matter of fact, didn't the response from the Washington Academy of Surgery—Would you give it to me, please (addressing Mr. Leahy)?

Wasn't it as a matter of fact dated January 31, 1938? (Gov. Ex. 450-A).

A. That is the date given.

Q. So the reason which you advised the president of the hospital that to approve Selders would be aiding and abetting Group Health Association antedated this letter by over a month; am I correct?

A. Yes.

Q. And did the Washington Academy of Surgery give you any grounds for recommending against Dr. Selders' application? Will you gaze at that letter again and see whether it discloses any reasons at all?

A. That letter gives no grounds.

Q. Now, as a matter of fact, before you received any word from the Washington Academy of Surgery your board of directors on January 25 had already withdrawn Dr.

Selders' temporary privileges and denied him courtesy privileges; isn't that correct?

A. On two grounds recommended to them.

Q. Yes. On two grounds. And that was six days before you got any report about his qualifications; am I right?

A. Yes, because there were other sufficient grounds.

Q. Yes. And weren't those grounds the grounds recommended by the medical staff?

A. They were the grounds recommended by the medical staff.

Q. Yes. And wasn't the action of the District of the directors predicated upon the recommendation of the Medical Staff?

A. It was.

Q. And didn't Dr. Eisenman so tell Dr. Selders (handing Gov. Ex. 348 to the witness)?

A. He did.

Q. And isn't it true also that before you received any reply from the Washington Academy of Surgery your president had received a letter from the president of Emergency Hospital asking for an explanation for the admission of Miss Sara Abbott to the Garfield Memorial Hospital (handing Gov. Ex. 475 to the witness)?

A. That letter is not within my knowledge until you exhibit it here.

Q. You never had any knowledge of that?

A. I never had any knowledge of it.

Q. Did you have any knowledge of President Aspinwall's reply giving the explanation?

A. None.

Q. Did you know that copies of both those letters were sent to the District Medical Society at the time they were written?

A. I did not.

Q. Now, the Castle Letter (Def. Ex. 42) which was offered this morning was dated March 30, was it not?

A. Yes.

Q. And at that time the Board of Directors had turned down Dr. Selders on January 25?

A. It had.

Q. And it denied him even temporary privileges; is that correct?

A. It had.

Q. And at that time also your medical staff had met in March and had confirmed that action, had it not?

A. The medical staff does not confirm the action of the Board of Directors.

Q. Well, didn't you go along with that action in March of 1938?

A. The Board of Directors having acted, the medical staff had nothing further to do with it.

Q. Didn't the medical staff consider it again in March of 1938?

A. I have no recollection of it.

Q. On February 2, 1938, did not the Medical Staff meet (handing the witness a paper)?

A. What is this document?

Q. These are my notes. Do they refresh your recollection?

A. Only to the extent that that would be about the time when the Medical Staff would normally meet.

Q. Did you not attend that meeting?

A. I could not tell you at this late date.

Q. Did you not present information there with regard to Dr. Selders' application?

A. My recollection would have to be refreshed.

Q. All right. Here is a photostatic copy of the minutes themselves. Will you look at them and see whether or not they refresh your recollection?

A. All right.

Q. Is it not true that when Miss Tew was admitted to Garfield Memorial Hospital for a short time in February of 1938 Dr. Selders then had privileges to bring a person there in an emergency?

A. He had, and he might still have.

Q. Is it not true that at that time you had no formal definition of an emergency?

A. That is true.

Q. Is it not true that at that time you relied upon the judgment of the surgeon bringing the patient as to whether or not it was an emergency?

A. I could not unqualifiedly answer Yes to that, sir.

Q. Would not the judgment of the attending surgeon ordinarily be the criterion of admission of an emergency case?

A. If he had courtesy privileges.

Q. Suppose he did not have.

A. That would not be the criterion.

Q. Suppose he had privileges to bring a patient there in an emergency?

A. He would in an emergency.

Q. I ask you again, did you have any rules or regulations governing the definition of an emergency at that time?

A. None governing the definition of "emergency," but plenty governing the admission of surgeons not on the courtesy staff.

Q. As a matter of fact, following the Tew incident you drew up this definition of "emergency"?

A. I did.

Q. And that is the first time you ever had such a definition?

A. I do not know as to that.

Q. In that definition you said specifically that it was to apply to Group Health Association, did you not?

A. I said that the definition would apply to Group Health Association so that there would be no question involved.

Q. You did not pick out anybody else or any other clinic to whom it might apply in specific terms?

A. No.

Q. Is it not a fact that you made a copy of the definition of "emergency" available to the other hospitals in the District of Columbia?

A. I did not.

Q. Is it not a fact that the other hospitals in the District of Columbia applied to your hospital for that definition so that they might keep it?

A. I have been told so.

Q. The action of the Surgical Service in recommending against Dr. Selders was based upon the ethical status of Group Health Association and the fact that the legality of Group Health was being questioned?

A. There was another reason advanced by the Surgical Service.

Q. But pending the study of Dr. Selders——

A. There was another reason advanced by the Surgical Service.

Q. What was that?

A. It was that being the sole surgeon of a large group of people they would not be able to grant him surgical privileges.

Q. Will you find the statement of any action which the Surgical Service took in December of 1937? Have you any notes here with you?

A. No.

Q. The folder that you have in your lap—does that contain hospital documents at all?

A. It does not.

Q. Suppose you look at these, then (handing papers to the witness). I show you Dr. McGovern's report to the president. Does that indicate that the reason you just mentioned was presented?

The Court: Maybe you can get at it in this way. Was it a matter of record or not?

The Witness: I did not catch that.

The Court: Was this additional reason a matter of record?

The Witness: Yes, sir.

By Mr. Lewin:

Q. I show you the minutes of the Executive Committee of the Board of Directors and ask you if there is anything in that that could be interpreted as being the reason you suggested.

Mr. Leahy: What is the date?

Mr. Lewin: December 28, 1937.

The Court: If I may suggest: Maybe he can indicate what paper it would be.

Mr. Lewin: I wish he would.

By Mr. Lewin:

Q. Can you so indicate?

A. My information is it was a letter addressed by Dr. Hooe of the Surgical Service to me as Chairman of the Advisory Committee.

Q. Was it not addressed to you in the fall of 1938?

A. I don't remember the date of it.

Mr. Leahy: I have a copy of it right here.

By Mr. Lewin:

Q. Am I correct that it was November 21, 1938?

A. It was; evidently referring to a second application after legality had been determined.

Q. So that the reasons given in the fall of 1937 and the reasons given for the denial of privileges in January, 1938, did not include this reason which you have now mentioned as the additional one?

A. It is not so stated in the record.

Q. Did you not just tell his Honor that it was stated in the record, if it was stated at all?

A. It was not so stated in the record.

Mr. Leahy: His Honor asked him if it was made a matter of record, and he said Yes.

The Court: I thought he referred to a letter.

By Mr. Lewin:

Q. Now, Dr. Macatee, after you received notice of Mr. Justice Bailey's decision upholding the legality of Group Health Association, was Selders admitted to your staff?

A. He was not.

Q. Was he admitted at any time during 1938 after his temporary privileges were withdrawn?

A. So far as I know, he was not.

Q. And down to the date of the indictment he was not admitted, was he?

A. He was not.

Q. Although in the fall of 1938 he made an additional application?

A. Yes.

Q. And you simply let it take the same course, did you not?

A. Yes.

Q. And referred it to those various committees?

A. I don't know whether all the references were made or not.

Q. Were references communicated with in the fall of 1938?

A. I don't know.

Q. So far as you know, there was nothing more that happened except to send the applications through the mill again?

A. Yes. In the operation of the mill I had nothing to do normally, in my official capacity, with following up those references or making any communications having to do with them.

Q. What were the names of the two Group Health Association doctors who were admitted in 1938?

A. One, I think, was Dr. Price, and the other, my recollection is, was a Dr. Halstead. I am not sure.

Q. Dr. Halstead testified to the contrary when he was on the stand. Could it have been Dr. Bowe?

Mr. Leahy: Testified to the contrary of what?

Mr. Lewin: He testified that he was not admitted to the staff of Garfield Hospital in 1938. There cannot be any doubt about that.

Mr. Leahy: I don't know. It is too far back for me.

The Witness: The name Bowe sounds familiar.

By Mr. Lewin:

Q. It may have been Dr. Bowe and Dr. Price?

A. Yes.

Q. As a matter of fact, were not those gentlemen admitted for the first time on December 19, 1938?

A. Yes.

Q. And, as a matter of fact, did not you and your colleagues at the hospital know that a grand jury of the United States had been convened in the late summer of 1938 and was investigating this very matter at the time they were admitted?

A. I don't think that entered into the consideration of the matter.

Q. I did not ask you that. I asked you whether you did not know that that was so.

A. No; I don't know that it is so, but I do know that that would not influence me.

Q. As a matter of fact, don't you know that those gentlemen were admitted for the first time two days before the indictment in this case came down?

A. I don't know that.

Q. What would your testimony be now with regard to Dr. Halstead? Does that refresh your recollection that he was not admitted at all?

A. No; I don't remember.

Q. On your direct examination, Doctor Macatee, I find on referring to the record, that you gave this testimony. Mr. Leahy asked you with regard to the so-called White List—

"Q. Do you recall, Doctor, at what date, if any, any authorization was made to prepare an approved list which has been called a White List?"

And you answered:

"That was incorporated in the constitutional amendment adopted in March, 1937, in which the Executive Committee was charged with the duty of preparing such a list."

Do you remember that testimony?

A. I do.

Q. When you said it was incorporated in the constitutional amendment, you did not mean that the list itself was incorporated in that amendment, did you?

A. I did not; the authorization.

Q. Then you were asked:

"Q. I ask you, Doctor, if the preparation of an approved list had anything whatsoever to do with Group Health Association."

And you answered:

"Nothing whatsoever."

Do you remember that?

A. I do.

Q. Do you still stand on that testimony?

A. I do.

Q. Did you mean to confine your answer to the preparation of an approved list back in March, or the preparation of the approved list in July of 1937?

A. I meant to limit it to the preparation of an approved list in July, 1937.

Q. You did?

A. Yes.

Q. So that your testimony is that the preparation of the approved list in July of 1937 had nothing whatsoever to do with Group Health Association?

A. Yes.

Q. You also testified as follows:

"Q. Did that approved list, as it came before the Executive Committee on July 12, 1937, have anything whatsoever to do with the approval or disapproval of Group Health Association, Incorporated?"

And your answer was:

"It did not."

Do you remember that testimony?

A. I do.

Q. Do you stand on that testimony?

A. I stand on it.

Q. By that did you mean to limit your answer to the approved list as it came before the Executive Committee, or did it include also as it left the Executive Committee on July 12, 1937? In other words, is there any point in this definition as it came before the Executive Committee——

Mr. Leahy: I made no point of that.

A. There is no point in that. My answer is the same both as it came before and as it left.

By Mr. Lewin:

Q. And your testimony is that it had nothing to do with Group Health Association and was not directed at Group Health Association?

A. That is true.

Q. Did you mean to testify also that when it was first authorized to be issued to the hospitals as well as the members on June 21, 1937, it was not aimed at Group Health and had nothing to do with it?

A. It was not. It was unfinished business left over from March 25.

Q. Is it also your testimony that when it was sent out on July 29 both to the members of the District of Columbia Medical Society and to all the private hospitals, that then it was not directed toward Group Health Association?

A. It was not.

Q. Is it not true that the committee which was appointed in March, 1937, to prepare this White List consisted of the defendant McGovern as Chairman, and of the defendant Hooe and of another doctor named Dr. Daniel Borden?

A. I don't recollect the composition of the committee.

Q. To refresh your recollection I show you the minutes of March 19, 1937 (Gov. Ex. 36).

A. Yes; that would be the committee.

Q. And the committee then consisted of three, two of whom are defendants in this case; is that correct?

A. Are defendants; yes.

Q. Is it not true that the first approved list which was sent out under Section 5 was approved by the Executive Committee on July 12, 1937?

A. I think that is the correct date.

Q. No list under Section 5 had been approved by the Executive Committee or the Society prior to that date?

A. That is true.

Q. Is it not true that on July 12, 1937, the Executive Committee had had the subject of Group Health before it on a number of occasions?

A. On two occasions.

Q. Had it not discussed the Group Health Association situation on June 1?

A. It had.

Q. At an executive hearing to which Colonel Jones came?

A. Yes.

Q. And at which a committee was appointed to make further study?

A. Yes.

Q. And was not that committee required to cooperate with Dr. Verbrycke's committee on Medical Economics?

A. Yes.

Q. And was not Dr. Yater a member of Dr. Verbrycke's committee?

A. I don't know.

Q. Dr. Yater is a defendant in this case, is he not?

A. Yes.

Q. If the records show he was a member of that committee you would have no doubt of that, would you?

A. I would not.

Q. Did not the committee include Dr. McGovern as Chairman of the committee, and Dr. Hooe?

A. Include them?

Q. Yes, those two.

A. Yes.

Q. And they were the same McGovern and Hooe who were on the committee to prepare the approved list; is that right?

A. Yes.

Q. Is it not true that Group Health Association had been discussed by the Executive Committee on June 21?

A. That is true.

Q. And at that meeting Dr. Verbrycke had made his first report for both his committees?

A. Yes, sir.

Q. And at that meeting you had decided to have a conference with Dr. Brown of Group Health on June 21?

A. That is true.

Q. And had not Group Health Association been pretty fully discussed at that meeting with Dr. Brown and Mr. Penniman and some of those other gentlemen on June 24?

A. That is true.

Q. Is it not also true that you and a number of defendants in this case had discussed Group Health Association on May 16 in Dr. William Gerry Morgan's office?

A. That is true.

Q. Is it not true also that you and a number of the defendants in this case discussed this subject with Dr. Olin West of the American Medical Association in the early part of June?

A. I don't think I had.

Q. Did you not know that a committee had met with Dr. West?

A. Pardon me. I had discussed it with Dr. West in Atlantic City.

Q. And had you not also discussed it with him at the Metropolitan Club?

A. No, sir.

Q. Did you not know that some of them had done so?

A. I heard so.

Q. But you say you discussed it with him at Atlantic City?

A. Yes.

Q. That was June 9th or 10th, was it not?

A. Yes.

Q. So, would you say it had been discussed by you and others prior to July 12, 1937, on some seven occasions?

A. Yes.

Q. Is that correct?

A. I don't know how it adds up, but it may have been that many times.

The Court: Let us call it seven.

Mr. Lewin: It is six or seven.

By Mr. Lewin:

Q. Let me hand you the minutes of this meeting of July 12. (Gov. Ex. 37) Will you refer to the minutes of July

12, 1937, which are the minutes of the meeting at which the list was approved, and see if the committee of which Dr. McGovern was chairman did not report?

A. It did.

Q. And did he not adopt as his report the report prepared by Dr. Verbrycke?

A. Yes.

Q. And was not that adopted by Dr. McGovern's committee of which you were a member, as the report of the committee?

A. Yes.

Q. Is it not true that in the report the following appears with regard to Group Health:

"Active opposition is possible at present. Whether it is advisable is another matter, unless some substitute plan can be suggested"——

Mr. Leahy: Just a moment. That report was not adopted.

Mr. Lewin: The witness has just testified to the contrary.

Mr. Leahy: I object, if your Honor please, because I know distinctly what counsel is directing the attention of the witness to. There were two reports. One report was adopted and the other was tabled. He is now directing the attention of the witness to the one that was tabled.

Mr. Lewin: Your Honor, I did not ask him for the action of the Executive Committee on this report. I asked him whether this is not the report of the committee headed by Dr. McGovern and of which he was a member.

Mr. Leahy: No; you did not.

Mr. Lewin: I beg your pardon; I did.

Mr. Leahy: I will stand on the record.

The Court: Is that what you want to ask him?

Mr. Lewin: I pointed it out in the minutes.

The Court: It will be understood.

By Mr. Lewin:

Q. Is not this (indicating) what you and Dr. McGovern and Dr. Hooe and those others reported:

"Failure to place a cooperative on the approved list of the Medical Society would automatically forbid any consultations by members of our Society. Any full-time employees of the Corporation could probably easily fail to

be put on the courtesy list of the hospitals for one reason or another without the fact of his connection with the co-operative being even mentioned. In fact, any combative methods would necessar-y have to be camouflaged to the nth degree."

Am I right?

A. Are you right in what?

Q. That that was part of your report, or the report of the committee headed by the defendant McGovern.

A. Is this document that you are reading a letter addressed to Dr. McGovern by Dr. Verbrycke after he had relinquished his post as chairman of the Executive Committee?

Q. Is not this correct? Let us have no doubt about it. At the first part of that meeting did not this transpire——

Mr. Leahy: Why don't you ask the witness?

Mr. Lewin: I am going to have him answer it from the minutes.

By Mr. Lewin:

Q. Referring to the report which was prepared by Dr. J. Russell Verbrycke, who was then chairman of the committee on Medical Economics, it says:

"Since that time the committee has met and studied and reviewed supplementary plans that Dr. Verbrycke and Dr. McGovern offered as a report to the Executive Committee tonight."

Is that correct? Does that appear there?

A. That appears there; yes.

Q. Does not the language that I have read you appear in that very report which Dr. McGovern offered as a report of his committee?

A. It appears in the letter from Dr. Verbrycke which was adopted only in principle.

Q. Was it not adopted as your report?

A. In principle only.

Q. Did you not testify that these minutes correctly reflected what transpired at that meeting?

A. If I did, then I qualify that answer.

Q. You now qualify it to say this is not your report?

A. That is a report adopted in principle. It is not my report.

Q. Do you see any place in the minutes where it says that it was adopted only in principle?

A. Did you not just read so?

Q. I don't remember it. (Reading):

"which Dr. McGovern offered as a report to the Executive Committee."

Is there anything in there about offering it only in principle?

A. Yes. (Reading): "was approved in principle by the Executive Committee at a subsequent meeting."

Q. That was the original report, was it not, that was rendered on June 21, and does it not clearly show that?

A. (Reading:) "The secretary made a motion that this letter be accepted as a report of the subcommittee and be approved in principle."

Q. That is the action of the Executive Committee, is it not?

A. That is the action of the Executive Committee.

Q. Now I ask you whether the action of your subcommittee was not to adopt that as your report.

A. I cannot say that it was, because the report of the subcommittee was made extemporaneously and at the time there had not been any formal meeting of the committee and no formal action taken.

Q. Do not the minutes here show that that was offered as the report of your committee and accepted as the report of your committee?

Mr. Leahy: Point it out, please.

Mr. Lewin: I have pointed it out a number of times.

Mr. Leahy: Oh, no; you have not.

A. To get the picture, you have got——

Q. What is your answer to my question now?

A. What is the question?

Q. I want to know whether the report from which I read was the report of your committee which was offered as the report of your committee and taken by the Executive Committee as the report of your committee?

A. It was a report offered by the chairman at that time without objection by other members of the subcommittee and adopted by the Executive Committee in principle only.

Q. Is not this true, that it contained the language that I have read?

A. Yes.

Q. Is it not true that when you said that failure to put a cooperative on the approved list of the Medical Society would automatically forbid consultations, were you not referring to this approved list, approved that very day or night, July 12, under Section 5?

A. That is probably the list referred to there.

Q. And when you referred to failure to put a cooperative on the approved list were you not referring to Group Health Association?

A. I was not; the letter was.

Q. Is not that what the report was referring to?

A. It was.

Q. Is it not true also that there was an amendment and only one amendment to the approved list that night which was offered for approval of the Executive Committee?

A. I have no recollection of any amendment.

Q. As a matter of fact, did you not object to Group Health Association on the ground that you thought it was an instrumentality of the Federal Government?

A. On the occasion of the consideration of the approved list?

Q. Yes.

A. Group Health Association was not considered in the preparation of the approved list.

Q. In those meetings prior to July 12, and on July 12, as disclosed by this report, was not one of your objections to Group Health Association that you regarded as the Government coming into the practice of medicine?

A. That was one consideration.

Q. Then at this time you regarded Group Health Association as connected in some way with the Federal Government, did you not?

A. Yes.

Q. And would you regard some of its doctors on the staff of Group Health as being connected with the Federal Government? Is that right?

A. Yes.

Q. Is it not true that when this report was first brought to the attention—that is, the report on the approved list, that item read, as one of the groups to be approved, "Medical personnel connected with the Federal and Municipal Governments within the District of Columbia or within ten miles thereof"? Is that right?

A. That is true.

Q. If that list had been approved in that manner it would have carried——

A. Just a moment.

Q. Wait a minute.

The Court: He has a right to explain his answer.

Mr. Lewin: He is trying to answer something else.

The Witness: No; I am not. I am trying to answer that particular question, because that particular No. 10 had to do with services by medical officers and set up with statutory rights behind them.

By Mr. Lewin:

Q. If Item 10 had been approved as drawn, that you were approving of "medical personnel connected with the Federal Government," it might have included Group Health Association and its members, might it not?

A. It might not.

Q. You say it would have, do you?

A. Oh. I see the drift of your question now.

Q. Just answer the question. Would it not?

A. Your question cannot be answered as put.

Q. If you had permitted this report to go through with that item 10 reading that you approved the medical personnel connected with the Federal Government, that might have carried with it the approval of Group Health Association and its members, might it not?

A. It might have. I have no knowledge of its having been amended with that object in view.

Q. But it was amended, was it not, and was not the amendment suggested by you? Am I right?

A. Yes. I said, "employed by" rather than "connected with."

Q. Is this correct——

A. (Continuing): And the purpose of making the amendment was——

Q. I did not ask you that. (Reading):

"Dr. McGovern read the proposed list of approved organizations, groups, and individuals. Dr. Macatee suggested that the words 'employed by' be substituted for the words 'connected with' in item 10. With this change the list was approved upon motion duly seconded and adopted." Is that correct?

A. That is correct.

Q. So that after such amendment went through the list could not be construed as approval of Group Health Association or its members, whereas before it might have been?

A. The amendment had nothing to do with anything other than the grammatical construction of the document.

Q. Nevertheless the amendment had the effect that I have just indicated, did it not?

Mr. Leahy: I object. That is argumentative.

The Court: Yes; that is argumentative.

A. It is not my conclusion.

By Mr. Lewin:

Q. Is it not true that when that list was amended and was ready to be issued the following transpired in the minutes, directly connected with the list itself and without intervening colloquy whatever (reading):

"Dr. Raymond T. Holden, Jr., inquired as to the personnel maintained in the proposed Group Health Association, Inc. Dr. Hooe pointed out that it was a separate individual corporation and would have to be approved as a single unit. As a matter of information Dr. Hooe would inquire if he was right in the assumption that this approved list would not have to be submitted to the Society, but from tonight would be filed in the secretary's office."

Does not that appear?

A. It appears.

Q. Just in the way I have stated it, does it not?

A. Yes.

Q So that Group Health Association was specifically considered at the very time that the White List was approved, and in connection with it?

A. Group Health Association was specifically considered and excluded.

Q. That is what I thought.

A. Excluded from consideration in connection with the White List.

Q. Do you find anything that excludes it here (indicating)?

A. (Reading): "Dr. Holden inquired as to the personnel maintained in the proposed Group Health Association. Dr.

Hooe pointed out it was a separate individual corporation and would have to be approved as a single unit when it came up for consideration for approval."

Q. Does it say "when it came up for consideration"?

A. No; but that is the meaning of it.

Q. I think you testified that the reason it could not be approved then was because it had not made application for approval; is that right?

A. That among other things.

Q. Did you not know that at that time it had been in existence as a corporation some five months?

Q. I did not. I don't know how long it had had corporate existence. I had known of it only since about the middle of May.

Q. Did you not know that in June and July it was an organization seeking medical personnel?

A. I did not know whether it was then seeking medical personnel.

Q. Had not Dr. Brown told you that in his meeting with you on June 24?

A. He said that eventually it would seek medical personnel.

Q. Did he not say they were seeking medical personnel then?

A. I don't recollect that.

Q. Did you not know they had already approached Dr. Neill and asked him to come with the staff?

A. I had no knowledge of that.

Q. Did you not say when you went down to see the representatives of Group Health that you understood approaches had been made to your members, on July 26?

A. Yes.

Q. So you knew on July 26 that they were seeking medical personnel?

A. Obviously I did.

Q. Do you think you gained that information between July 12 and July 26?

A. I don't know how I gained the information.

Q. Doctor Macatee, did you not know on July 12 that they were seeking medical personnel and had been approaching some of your members?

A. I couldn't testify to that to save my life.

Q. You would not deny it?

A. I cannot deny it; no.

Q. Was not the purpose of having an approved list to guide your members as to whether or not they could join up with or participate in certain organizations?

A. In certain organizations, but not Group Health Association.

Q. That is what you said. But I ask you whether or not the whole purpose of the approved list was not to guide your members as to whether they could join or not?

Mr. Leahy: Join what?

Mr. Lewin: Organizations.

A. The whole purpose of the approved list was in Chapter 9, Article 4, Section 5, which had to do with something else entirely, unrelated to Group Health Association.

Mr. Lewin: I move that that be stricken as not responsive.

The Court: You asked him what the purpose was.

By Mr. Lewin:

Q. I asked you whether it was to indicate to your members whether they could participate with certain organizations.

A. My answer would have to be something of a recital, and that is that the amendment to the constitution began in January, 1936, and it was amended in January, 1937.

Mr. Lewin: I do not think that is responsive, your Honor. I move that it be stricken as totally unresponsive.

The Witness: And that it is——

Mr. Lewin: I have a motion pending.

The Court: Just a moment, Doctor. It is not always possible to answer a question yes or no. It may not give a correct impression. I think it is well, if he can answer yes or no, to do so, and then make any qualifications or explanations that are necessary. After all, it does not make much difference how you approach the answer. He was giving you his understanding of the purpose. You asked for the purpose. He was explaining to you the purpose as he understood it.

Mr. Lewin: I most respectfuly submit that the witness was giving me a history.

The Court: I think the Doctor was getting away from the purpose.

The Witness: My next sentence would complete the history.

Mr. Lewin: I do not want the history. I move that all that history go out.

The Court: He told you the purpose, and that is what you were after. Suppose you put another question.

By Mr. Lewin:

Q. I will ask you this, whether it would not have been a more suitable time to put the organization on or off that list when they were in the formative stage and going around trying to get medical personnel, if you wanted to guide your own members?

A. It may have been a suitable time, but we did not have sufficient information about it to know at that time.

Q. Now, Doctor, you said that one of the reasons it could not go on the approved list was because it had not applied for approval.

A. Did I say that?

Q. That is what I recollect. Did you not say that? What is your answer?

A. I would rather say that in my report I said so in September.

Q. Did you not testify here on Friday that that was the reason you could not put it on the approved list?

A. My memory fails me there, sir.

The Court: Suppose you ask him now and save time.

By Mr. Lewin:

Q. What is your answer now? Was that the reason you could not put it on the approved list, or one of them? Will you answer that question?

A. The answer is that it is bound up in the fact that at that meeting the special committee was charged to go down and have another talk with Group Health Association to see if we could not reach some accord.

Mr. Lewin: I object, and ask that the answer be stricken as unresponsive.

The Court: Have you got the record there?

Mr. Lewin: Yes, sir.

By Mr. Lewin:

Q. Did you not testify as follows (reading):

"Q. Did that approved list, as it came before the Executive Committee on July 12, 1937, have anything whatsoever to do with the approval or disapproval of Group Health Association, Inc.?"

And you answered:

"A. It did not.

"Q. Why not?

"A. Because Group Health Association had not been at a stage of development where it had asked for approval or where approval could be given, for lack of information."

Was that your testimony?

A. That sounds like it.

Q. Can you tell me what other organizations that were approved and put on the approved list asked for approval at that time?

A. None. I say, none, Mr. Lewin. I am not sure about that.

Q. That is your best recollection, is it not?

A. I was not a member of the committee that received applications for approval, so I just don't know.

Q. Application for approval was not a condition precedent to getting on that approved list, was it?

A. Not this one; no.

Q. As a matter of fact, Dr. McGovern was going out into other states to round up the list himself, was he not?

A. I don't know how to answer that, because it is not within my own knowledge.

Q. Don't the minutes on that occasion show this, Dr. Macatee?

Mr. Leahy: What meeting?

Mr. Lewin. July 12, 1937 (Gov. Ex. 37). "Dr. McGovern stated that he requested the various county medical societies in Virginia and Maryland, within ten miles of the District of Columbia, to send him a list of their membership. He was not very successful by letter and intended to contact the secretary personally. He added there were a few physicians practicing medicine in the District of Columbia who were on the rolls of the Society. The Society's office

was busy at the present time checking the list of physicians and surgeons as classified in the newest telephone directory and the Commission on Life Insurance has been approached to obtain a list of all associates in the District of Columbia."

Doesn't that appear?

A. It does.

Q. And didn't that transpire on that occasion?

A. It did.

Q. So, would you say now, that the failure of Group Health Association to apply formally was any reason for not including it on the approved list?

A. That was still a good reason, though not the controlling reason.

Q. What was good about it?

A. It was true.

Q. You still say it was true, that one of the reasons for leaving Group Health off that list was because it didn't apply?

A. I said that was true. The controlling reason was we hadn't come to the point where we could approve or disapprove of it finally.

Q. Let me see if I can make this more clear. As a matter of fact, hadn't Dr. Brown said he was anxious to go along with the District Medical Society, prior to July 12, 1937?

A. That may have been one of his statements at the meeting.

Q. And hadn't Mr. Penniman said in substance that same thing; that he was anxious to go along with the Medical Society and have your approval?

A. He may have said it.

Q. Now, when you acted as spokesman on July 26, 1937, in the meeting with the Group Health Association trustees, I think you said that the meeting's minutes herein correctly reported that meeting, did you not; that was the meeting of July 26th?

A. That statement was extemporaneous and, as transcribed, ran along with my general thought that I wished to express therein.

Q. Didn't you say this to the Group Health trustees at that time:

"The principal difficulty that we are facing at the present time also is the knowledge of certain members of the Dis-

trict Medical Society have been approached with a view to serving certain organizations in a medical capacity and professional capacity";

and then, skipping a little:

"There is another provision which prohibits members of the Medical Society from lending their assistance to any corporation, group or individual under a contract until the practices and purposes of the organization have been approved by the Medical Society" et cetera.

You said that?

A. Yes.

Q. Wasn't this the other provision, this section 5, under which this approved list went out on July 29th?

A. I don't know whether it was section 5 or section 2.

Q. Isn't section 5 the one that prohibits members of the Medical Society from lending their services to any corporation, group or individual unless the practice and purposes have been approved?

A. Yes, that is the provision of section 5.

Q. Then you were calling section 5 to the attention of the Group Health Association as early as July 26, 1937?

A. Yes.

Q. You were calling their attention to it in connection with the information you had that Group Health Association was seeking a staff and had approached members of the Medical Society?

A. Obviously.

Q. Is that right?

A. Yes.

Q. Now, on July 27th, isn't it correct, that the resolution to send the so-called white list to the members of the Medical Society of the District of Columbia was amended so that it would be sent to all the hospitals as well?

A. If the record shows so.

Q. Aren't you familiar with that record?

A. No, not that familiar.

The Court: There isn't any question about that, is there?

Mr. Leahy: No, whatever it was; I know there was such a provision.

The Witness: Yes, that states so in the minutes.

By Mr. Lewin:

Q. That amendment was adopted on July 27th?

A. Yes.

Q. Now, on July 29th, the so-called white list was issued for the first time?

A. I have heard evidence here to that effect.

Q. Wasn't it sent out with two letters dated July 29th, signed by the Secretary of the District Medical Society?

A. There appears to be such a letter.

Q. And didn't the first of these letters read as follows: (Gov. Ex. 45).

"Dear Doctor:

"It may have come to your attention that there is an organization or organizations that are interested in gaining medical personnel. Your attention is called to Chapter IX, Article 4, Section 5 of the Constitution", quoting it in full.

Isn't that what it says?

A. Yes.

Mr. Leahy: It says more than that.

Mr. Lewin: Yes, it does:

"You are particularly urged to submit to the C. C. & I. M. Committee, pursuant to the Constitution, any and all contracts, written or verbal, under which you may contemplate giving your services"?

A. It says that.

Q. That letter which carried the white list with it refers to an organization or organizations that are interested in gaining medical personnel, does it not?

A. Yes.

Q. Would you say that one of those organizations was Group Health Association?

A. Presumably.

Q. So that whether it was directed to Group Health Association on July 12th, or not, it was plainly directed to Group Health on July 29, 1937, the first time it went out?

A. That among others.

Q. Now, at this very meeting on July 29th, didn't you make that fact abundantly clear? Didn't you say this with regard to Group Health Association,—(handing witness Gov. Ex. 37 and indicating)?

"It was his impression, gained from contact with certain individuals, that they are highly intelligent people who have profoundly studied this subject, who are aware of all the social currents flowing through the country with respect to the relation of the medical profession and the people. They are aware of what has been done elsewhere and the results." Did you say that or words to that effect?

A. My answer is that those minutes, taken down in longhand, had been shown not to express my thoughts so often that I hesitate to say they are, or that I did say that; but that was my opinion.

Q. That was your opinion, and you have no reason to doubt you said it?

A. Correct.

Q. When you were talking about "these people," weren't you talking about the sponsors of Group Health Association?

A. Yes.

Q. And didn't you say:

"My feeling is that this is a group of responsible, honest, rather public-spirited people, who are undertaking to do something for the benefit of their associates in office. They are convinced and have secured what they call competent legal advice that they are on secure legal ground. They have by reason of their knowledge of similar projects elsewhere become convinced that wherever such organizations spring up they almost consistently receive the antagonism and the animosity of the local medical profession."

Didn't you say that?

A. Probably.

Q. And when you were speaking of these "projects" weren't you referring to the Ross-Loos Clinic and other prepayment plans such as that?

A. Presumably.

Q. Didn't you say also:

"Dr Macatee added that he was of the opinion that their desire to avoid publicity in this matter was due to their knowledge of that fact"?

A. Probably.

Q. And by that didn't you mean the reluctance on the part of the Group Health people to open their doors to give you the contract with H.O.L.C. was due to the fact that

they knew by reason of their knowledge of "similar projects elsewhere * * * that wherever such organizations spring up they almost consistently receive the antagonism and animosity of the local medical profession"? Isn't that what you meant?

A. I think that is why they proceeded with their organization without our cooperation and advice before they asked for it.

Q. And you seemed to feel that they were somewhat reasonable, knowing of the antagonism of the local medical society, in being a little cautious in putting all their information in your hands?

A. Yes.

Q. Didn't you say this, following your discussion of Group Health Association, and as part and parcel of it:

"Dr. Macatee added that there is now available a list of corporations and organizations and persons employing physicians in a contractual relationship, prepared under provisions of the constitution and by-laws. He urged the members to take the list and examine it carefully and familiarize themselves with the contents".

Did you say that?

A. Yes.

Q. And when you urged this examination of the list, and urged the members to familiarize themselves with the content, weren't you referring to this approved list issued July 29th?

A. Yes.

Q. Weren't you calling attention to its contents in connection with their attitude toward Group Health Association?

A. Yes, because the adoption of the white list had been on account of our experience in another matter, and we finished up that business in order to save us further headaches of the same sort.

Q. Is this also the fact too: that after you talked that way, Dr. Sprigg reread a recommendation of the Executive Committee which was adopted?

Mr. Leahy: What date is that?

Mr. Lewin: July 29, 1937.

The Witness: Yes.

By Mr. Lewin:

Q. And didn't that resolution have to do with Group Health Association?

A. It did.

Q. And then didn't the Secretary say, without any other subject matter intervening between Group Health and what he said, this:

"The Secretary stated that it was the duty of the Society's office to fulfill instructions from the Executive Committee to supply each member of the Society with a copy of the approved list that had been prepared, pursuant to Chapter IX, Article IV, Section 5 of the constitution. He pointed out that they were being mailed by registered mail. He announced that any member wishing to secure this list tonight could do so by applying at the Secretary's office and signing for same, which would aid in the distribution"?

A. And the two statements had no connection with each other.

Q. Although one follows the other?

A. The minutes are never subdivided to show divisions of subjects.

Q. Was there any subject matter that intervened between the matter concerning Group Health Association and this matter?

A. Nothing appears in the minutes, but it might very well be and appear that taking up another item the Secretary said thus and so.

Q. But you don't know about that?

A. No.

Q. Mr. Leahy went over with you, I believe, the letter which the defendant Sprigg prepared in the fall of 1937, addressed to each one of the hospitals; am I right?

A. I can't give direct testimony about that, because I wasn't present at the meeting when this thing was discussed.

Q. Didn't that letter start off by calling attention to this section 5?

Mr. Leahy: The witness said he had no knowledge of it.

Mr. Lewin: I know he said that, but the Court has indicated that we may read portions of the minutes.

The Court: Yes, you may read them, but if the witness

says he has no knowledge on the subject he can't testify to it.

The Witness: If you put the letter before me I can say "I suppose that might be the letter," but I wasn't present when it was presented and considered.

By Mr. Lewin:

Q. You were present on November 3rd, 1937?

A. I think I was not.

Q. Didn't you testify this morning with regard to the resolution of the defendant Willson, seconded by the defendant Christie?

A. I couldn't have testified as a direct witness, because I wasn't present on that occasion.

Q. I ask you whether that resolution, which was certainly introduced again through your testimony, whether that resolution didn't say that the District Medical Society had an apparent means of hindering the successful operation of Group Health Association if it could prevent the doctors from being received in the local private hospitals, and then didn't the resolution refer directly to section 5, the same section adopted in March, and under which the white list went out in July?

A. I have no direct knowledge of that document; I would have to appeal to the record.

Q. Let me come back to that meeting which you had with the Group Health trustees on July 26th. You remember that?

A. Yes.

Q. Isn't it true that at that meeting you quoted somewhat from the principles of ethics?

A. Yes.

Q. Did you follow that up by pointing out that they might have difficulty in having and getting consultations?

A. Yes.

Q. And didn't you point out that they might have difficulty in getting hospital accommodations, because of the principles of ethics, medical ethics?

A. I am not clear about that.

Q. Wasn't one of the principles of medical ethics, to which you directed their attention, certain criteria for making contract practice ethical?

A. Yes.

Q. And didn't one of them include this "free choice of physicians"?

A. Yes.

Q. Now, isn't it true that in June, 1937, the American Medical Association had amended its principles of ethics so as to include what it thought was a definition of "free choice of physicians"?

A. Yes.

Q. And isn't it true that you failed to bring that definition to the attention of the Group Health representatives when you met with them?

A. I did fail to bring it to their attention.

Q. Didn't you consciously fail to do so?

A. I did.

Q. And because you wanted to withhold from them this more liberal definition of "free choice"?

A. No, the record will show that it was withheld because it was ambiguous, had just been adopted; we didn't know the purport of it.

Q. And isn't it true that because it was ambiguous, you refrained from giving them that information?

A. I did.

Q. But tried to leave them with the impression that this prohibition against free choice was a clear and unambiguous thing?

A. You are asking me now to recall motive?

Q. I am asking you whether that was not your intent to withhold from them this recent amendment to the principle of free choice, and to leave them with the impression that contract practice was condemned because of a clear meaning of free choice?

A. If you want the best of my recollection I will say that I did not have any such intent, and to the best of my recollection I discovered this newly adopted item after the thing.

Q. Dr. Macatee, weren't you present at the House of Delegates in Atlantic City in the early part of June, when this very amendment pertaining to free choice of physicians was enacted?

A. I was present at the meeting but I might not have been present at the session; more likely I was otherwise engaged at the time.

Q. Is it your thought that you forgot this on July 26th?

A. Reading back on the record, I think I forgot all about it.

Q. But you didn't forget it on July 27th, the very next day?

A. Naturally, I would think over what I had said, trying to summarize what I had said extemporaneously and, looking over it, see what I had omitted, came across this thing and brought it to the attention of the Executive Committee.

Q. Didn't you bring this to the attention of the Executive Committee one day after this meeting with the representatives of Group Health Association?

"Dr. Macatee, in continuing, read an excerpt from the latest issue of the principles of medical ethics of the American Medical Association, having to do with the definition of free choice of physicians, as follows:

"'The phrase "free choice of physicians," as applied to contract practice, is defined to mean that degree of freedom in choosing a physician which can be exercised under usual conditions of employment between patient and physician when no third person has a valid interest or intervenes. The interjection of a third party who has a valid interest or who intervenes does not per se cause the contract to be unethical."

That would apply, would it not, to Group Health Association?

A. No.

Q. Wouldn't that have some reference to Group Health?

A. No, because the reference is to constituent or component units, local associations or societies.

Q. Doesn't it say that the "interjection of a third person who has a valid interest between patient and physician does not per se cause the contract to be unethical"?

A. It does say so there.

Q. And doesn't it define a "valid interest" as one where, by law or necessity, a third party is legally responsible either for cost of care or for indemnity, and doesn't it supply the definition of "intervention" as the voluntary assumption of partial or full financial responsibility for medical care?

A. It does.

Q. And wouldn't that definition cover Group Health Association as one who intervenes?

A. Under the law of necessity?

Q. No, not under the law of necessity. It says "voluntary assumption: voluntary assumption of partial or full financial responsibility for medical care." Wouldn't that fit Group Health Association exactly?

A. You will have to apply the definition.

Q. And then doesn't it continue: "Intervention shall not prescribe"—I guess that means forbid; "endeavor by component or constituent medical society"—I guess that means members of the A. M. A., doesn't it?

A. Yes.

Q. "To maintain high quality of service rendered by members serving under approved sickness service agreement between such societies and government boards or bureaus and approved by the respective society."

A. That is the controlling phrase there.

Q. In other words, when the local society does it and approves it that throws out this "free choice of physicians"?

A. Yes.

Q. You get free choice of physicians when the local society approves it, but you may not have such free choice when something like Group Health does it, is that it?

A. I will have to leave it to you to interpret.

Q. Doesn't this follow immediately afterward:

"The ambiguity of the situation was immediately apparent.

"Dr. Macatee said that he certainly did not read this at the time of the meeting with the H. O. L. C. unit. He did, however, read on that occasion extensively from the principles of medical ethics under which the medical profession is bound, showing that the project as at present constituted could not be expected to be approved by the Medical Society of the District of Columbia, the local unit of the American Medical Association."

Is that right?

A. Yes.

Q. So at that time you had enough information to be very definite that Group Health could not go on your approved list, didn't you?

A. That was my opinion.

Q. And that was July 27, 1937?

A. Yes. I told them so on the 26th.

Q. About two weeks after the white list was approved and two days before it issued?

A. That is the way the dates fall.

Redirect examination:

I received a letter dated November 21, 1938, from Dr. Kerr, marked Def. Ex. 46.

Def. Ex. 46 was received in evidence and read to the jury, as follows:

This letter is November 21st, 1938, on the stationery of Dr. Harry Hyland Kerr, 1744 M Street, N. W., Washington, D. C.

"DEAR DR. MACATEE:

The Senior Surgical Staff of the Garfield Memorial Hospital unanimously recommend to the Advisory Committee and to the Board that courtesy surgical privileges be denied to Dr. R. E. Selders.

The Surgical staff believes that, though Dr. Selders has a competent post-graduate degree in Surgery, his experience has been limited to one year as resident in a non-teaching hospital in a small Massachusetts city, and is not sufficient to qualify him to take care of the surgery that may arise among 2000 or 3000 people.

Sincerely yours, Signed H. H. Kerr for the Staff."

The first time I ever heard of the questionnaire from Dr. Warfield concerning Garfield Hospital was at this trial, and that questionnaire was never received by the staff of Garfield Hospital to my knowledge, nor were answers ever made coming from the committee, to the best of my knowledge, to any questionnaire.

The language "aiding and abetting Group Health Association," as used in Gov. Ex. 499, means that the board decided that they would not admit Dr. Selders to courtesy privileges because of the alleged illegality of Group Health; and that to have done so the hospital would be put in a position of aiding and abetting an illegally operated corporation.

When I drew the definition of "emergency" at Garfield I had in mind nothing except that nobody would be excluded from the hospital if they came there in a real emergency, and I had no idea that the definition would go beyond Garfield Hospital.

Q. Do you recall whether—and I want to see if I can straighten this out in just a minute—in the minutes of July 12th, 1937. Do you recall whether Dr. Verbrycke had submitted a report while on the Economics Committee of the District Medical Society or the chairman thereof?

A. Yes, I have seen that report somewhere. It was a number of pages, and I remember seeing it; I don't remember the contents.

Q. June 21st was the date that was submitted, was it not?

A. I don't know.

Q. All right, now, was Dr. Verbrycke, on July 12th, in office in any committee at all in the District Medical Society?

A. He was not.

Q. Your attention is directed now to Dr. Verbrycke's letter which was made part of these minutes. Doesn't it show and read: "I have no longer any official status, but I am deeply interested in the entire subject, and since I was the author of the original report which has been approved by the Executive Committee, I ask your leave to submit some further thoughts with the hope that they may be of some slight help." Is that correct?

A. Yes.

Q. Do you recall having looked at the opening sentence of that Verbrycke letter wherein he said he had no longer any official office and his reference to the report which he says has been approved in principle by the Executive Committee?

A. Yes.

Q. Why?

A. I thought you only asked if I remembered looking at the opening remarks in the letter.

Q. Yes. Now, having done that, do you recall what it was that was approved by the Executive Committee?

A. He refers in his letter to his report of June 21st.

Q. Will you look to see if anywhere in the minutes you find anything indicating what action the Executive Committee took with reference to this particular letter? Kindly look at the top of page 5, and see if it refers to Dr. Verbrycke's letter.

A. I think it does.

Q. What happened to it?

Mr. Lewin: Is he going to read from the minutes?

The Witness: I made a motion to the effect that the

supplementary report of the sub-committee be received and be held on the table for future consideration, after the report of the sub-committee. That was seconded and adopted.

Q. Do you recall now whether at any other time the report was ever taken off the table for action?

A. I don't recall; that is my independent memory.

I identify Def. Ex. 47 as the minutes of the meeting of the Executive Committee of the Medical Society of May 12, 1937. To my knowledge no member of the District Medical Society had heard of Group Health on May 12, 1937.

The list referred to in the meeting of May 12, 1937, is the White List that came out on July 12, 1937.

Defense counsel read Def. Ex. 47 to the jury as follows:

"Dr. F. X. McGovern, Chairman of the Subcommittee to prepare an approved list in accordance with the provisions of Chapter IX, Article IV, Section 5 of the constitution was recognized.

"The various items were considered seriatum as follows:

"1. All members of the Medical Society of the District of Columbia.

"2. Medical staffs of all hospitals, institutions and clinics, each member of which has been approved by the Medical Society of the District of Columbia, and/or the American College of Surgeons, the American Medical Association, the American Hospital Association, in the District of Columbia or within ten miles thereof.

"It was agreed to amend recommendation No. 2 as follows:

"'Medical Staffs of all hospitals, institutions and clinics, each member of which has been approved by the Medical Society of the District of Columbia.'

"3. The United States Government, medical personnel on duty in the District of Columbia or within ten miles thereof, namely, i. e., the United States Army, Navy, Public Health Service, and the Veterans Administration.

"4. The Health Officer and attached medical personnel.

"5. Membership of the District Medical Society.

"6. Membership of the Homeopathic Medical Society.

"7. Members of the Montgomery County (Maryland), Prince Georges County (Maryland), Fairfax County (Virginia), and Arlington County (Virginia), medical societies, who reside within ten miles of the District of Columbia.

"8. Members of the Alexandria Medical Society.

"9. The following compensation clinics.

"1. Washington Industrial Accident Clinic.

"2. Washington Medical Building Workmen's Clinic.

"3. Northeast Insurance Clinic.

"4. Union Market Workmen's Compensation Clinic.

"5. Market Compensation Accident Clinic.

"6. Washington Compensation Accident Clinic.

"7. Washington Insurance Clinic.

"8. Harry M. Lewis Clinic.

"9. First Aid Station.

"Discussion on the recommendation No. 9 was participated in after the reading of the other reports.

"10. All medical personnel connected with the Federal or Municipal Government within the District of Columbia or within ten miles thereof.

"Dr. Daniel Borden was of the opinion that this should not be included.

"Others could see no objection to this subdivision.

"11. Membership of the Medico-Chirurgical (Colored Medical Society).

"12. Membership of the Robert T. Freeman Dental Society (Colored Dental Society). In the consideration of item 9. Dr. W. M. Sprigg stated he thought the clinic should be listed temporarily."

The clinics appearing on the list set out in the May 12 minutes appear on the approved list of July 12 and these clinics had been in existence in the District since the passage of the Industrial Compensation law. These clinics had been before the District Medical Society on their purpose, maintenance and operation and had been approved.

It was stated on July 12, 1937, that that list was incomplete and as a matter of fact the Washington Sanitarium was not on the list. It did not purport to be a complete list. There were many doctors in Washington who were not on that list. Group Health never made a formal application for approval to the District Medical Society.

Q. There is one other thing. Under cross-examination you had your attention directed to the minutes of July 29. You made some answer in substance in effect to the end that the minutes had no subdivisions as to topics. Do you recall that?

A. I do.

Q. And your attention was directed to the reading of one entry which follows another entry in those minutes?

A. I recollect that.

Q. And your attention was directed to the minute with the statement that there was no information intervening between these minutes. I will ask you if the minutes show a line between those paragraphs, showing that there was something transpired in there?

A. There is a line indicating a division; a typed line.

Mr. Lewin: Wait a minute. What is that?

Mr. Leahy: A typed line.

Mr. Lewin: Is there any subject matter or discussion that appears between the resolution with regard to Group Health and this statement to the secretary?

The Court: Let the jury see it.

Mr. Leahy: Yes. Let it be passed to the jury so they may see it.

(Thereupon the minutes were passed among the jurors for inspection.)

The Court: Is that all?

Mr. Leahy: Yes. And I ask the same permission with respect to these minutes. If the jury will also look at the other pages to see where the breakdown comes.

Mr. Lewin: There is another page in the minutes I would like the jury to look at also.

The Court: Yes, you may do that.

Mr. Lewin: I would like the jury to consider these three paragraphs on this page, particularly the third one.

Mr. Leahy: You mean read them over?

Mr. Lewin: I would like to have them look over this statement of Dr. Macatee, and the subject matter of this here (indicating).

Dr. Walter Estell Lee, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I am a doctor. I reside in Philadelphia. I am professor of surgery at the Graduate School of Medicine of the University of Pennsylvania and have been connected with that school since its beginning in 1920. I graduated from the University of Pennsylvania in 1902; after graduation I trained at the Pennsylvania Hospital for six years. I signed Def. Ex. 44, being a letter to Dr. Frederick Sanderson, and forwarded it to him.

Cross-examination.

By Mr. Lewin:

In 1937 and 1938 Dr. George H. Meeker was dean of the Graduate School of Medicine at the University of Pennsylvania. I also signed a letter marked Gov. Ex. 661, and I suppose my stenographer sent it, as I gave instructions to have it sent. I also signed Gov. Ex. 659 and sent it out in the same manner as Gov. Ex. 661. The signature "Walter Estell Lee" on Gov. Ex. 660 is not mine, and I can't imagine who signed it, and I can't recognize the letter as my own.

J. Francis Moore, a witness for the defendants.

Direct examination.

By Mr. Burke:

I have been a witness in this case previously and brought some documents of the Federal Home Loan Bank Board which were subpoenaed. I identify Def. Ex. 48, 49, and 50 and 50a as the original records of the Home Owners' Loan Corporation and the Federal Home Loan Bank Board.

Cross-examination.

By Mr. Lewin:

These records are records found in our files, and this particular record was in the minutes file and is part of the minutes of the Home Owners' Loan Bank.

Excerpts from Gov. Ex. 1, a stipulation, being Articles I, II, III, IV, V, VI, VII, VIII, IX, and X, with amendments to December 20, 1938, of the by-laws of Group Health Association Inc., were read to the jury, as follows:

By-Laws of Group Health Association, Incorporated:

"Article I.

"Section 1. The name of this corporation shall be Group Health Association, Incorporated."

That is the name and location as adopted March 22nd, 1937.

"Article I.

Section 3. Other offices for the transaction of business shall be located at such places as the Board of Trustees may from time to time determine."

That also is the article and section as adopted March 22nd, 1937. The first article, Section 2 provides that its principal place of business shall be located in Washington.

"Article II. Membership.

Section 1. The corporation shall have no capital stock but shall be an association controlled by its members. The membership of this corporation shall be composed solely of employees of any branch of the United States government service, including such other classes or groups of persons, other than officers and enlisted men of the United States Army and Navy, as shall, within the provisions of the charter and the law governing the corporation, be designated by the Board of Trustees, provided, however that in case persons other than employees of Federal Home Loan Bank Board, its subsidiaries and affiliates, shall be designated by the Board of Trustees, provided, however that in case persons other than employees of Federal Home Loan Bank Board, its subsidiaries and affiliates, shall be desig-

nated as eligible for membership, such action shall first have approval of the members as herinafter provided."

That was the article as adopted March 22nd, 1937, and on May 25th, 1937, Section 1 of Article II was amended, and it then read:

"Section 1. The corporation shall have no capital stock but shall be an association controlled by its members. The membership of this corporation shall be composed solely of employees of any branch of the United States Government service, including such other classes or groups of persons, other than officers and enlisted men of the United States Army and Navy; as are provided for in the charter and the laws governing the Corporation, provided, however, that in case persons other than employees of Federal Home Loan Bank Board and agencies under its direction shall be designated as eligible for membership, such action shall first have approval of a majority of the Board of Trustees and a majority of the members of the corporation present in person or by proxy at a regular or special meeting."

Then, on October 4, 1937, the section and article were further amended:

"Article II, Section 1. The corporation shall have no capital stock but shall be an association controlled by its members. The membership of this corporation shall be composed solely of civil employees of the executive branch of the United States Government service; provided, however, that in case persons other than employees of the Federal Home Loan Bank Board and agencies under its direction shall be designated as eligible for membership, such action shall first have approval of a majority of the Board of Trustees. Employees of the legislative branch or judicial branch of the United States Government service are not eligible for membership."

Then, on October 25th, 1937, it was again amended to read:

"Article II, Section 1. The corporation shall have no capital stock but shall be an association controlled by its members. The membership of this corporation shall be composed solely of civil employees of the executive branch of the United States Government service; provided, however, that in case persons other than employees of the

Federal Home Loan Bank Board and agencies under its direction shall be designated as eligible for membership, such action shall first have approval of a majority of the Board of Trustees."

Then, on September 19th, 1938, the article was further amended to read:

"Section 1. The corporation shall have no capital stock but shall be an association controlled by its members. The membership of this corporation shall be composed solely of civil employees of the executive branch of the United States Government service."

Then:

"Section 2. All members shall have equal rights of membership and the right to vote for the Board of Trustees, and the right to share in the distribution of the assets of the corporation if liquidation takes place as in the charter is provided."

That was adopted March 22nd, 1937. On May 25th, 1937, the section was amended to read:

"Section 2. All members shall have equal rights of membership including the right to vote for the Board of Trustees, and the right to share in the distribution of the assets of the corporation if liquidation takes place as in the charter is provided."

"Section 3. Applicants for membership who have just entered the service of one of the aforesaid Federal branches or agencies in which the corporation is permitted to operate shall be eligible to all the benefits of this corporation from the date of first payment of dues, provided they are duly elected at the next meeting of the Board of Trustees, and, provided, further, that, as to new employees, they apply for membership within one calendar month after entering the service of such Federal branch or agency."

That was the section as adopted March 22nd, 1937, and on May 25th, 1937, that was amended to read as follows:

"Section 3. Applicants for membership who have just entered the service of one of the aforesaid Federal branches or agencies in which the corporation is permitted to operate shall be eligible to all the benefits of this corporation from the date of first payment of dues, provided they are duly

elected at the next meeting of the Board of Trustees, and provided further, that they apply for membership within one calendar month after entering the service of such Federal agency or br ch."

Section 3 of Article II was amended, again, on October 4, 1937, to read as follows:

"Article II, Section 3. Applicants for membership who have just entered the government service aforesaid shall be eligible to all the benefits of this corporation from the date of first payment of dues, provided they are duly elected at the next meeting of the Board of Trustees, and provided, further, that they apply for membership within one calendar month from the date of entrance on duty in the government service aforesaid."

Then the section was again amended on April 5th, 1937, to read:

"Article II, Section 3. Applicants for membership who have just entered the government service aforesaid shall be eligible to all the benefits of this corporation from the date of first payment of dues, provided they are duly elected at the next meeting of the Board of Trustees, and provided, further, that they apply for membership within one calendar month from the date of entrance on duty in the government service aforesaid."

And then on September 19, 1938, the section was again amended to read:

"Section 3. The Board of Trustees shall reject an application for membership if the applicant is not an employee of the character herein designated, and may reject any application for membership. The board of trustees, for just and reasonable cause, may expel from membership, after not less than fifteen (15) days notice and opportunity for hearing before the Board of Trustees, any person who, in the opinion of said Board of Trustees, shall have abused the privilege of his membership or is otherwise guilty of wrongful conduct detrimental to the Association or its membership. The Board of Trustees, after hearing as hereinbefore provided, shall be the sole judge of whether the conduct in question warrants expulsion from membership. Membership dues shall end upon expulsion."

Section 4:

"Dependents of members hereafter becoming members of this corporation will not be eligible to benefits from the corporation until the member has been in good standing for a period of three calendar months beginning with the date of his or her application.

All employees who do not hereafter apply for membership in the corporation within one calendar month from the date of entrance on duty as an employee of one of the Federal branches or agencies in which the corporation is permitted to operate, shall not be eligible to benefits from the corporation until three calendar months after the date of their application, but during said three calendar months no dues shall be chargeable against such member."

That was adopted March 22, 1937. On May 25, 1937, the section and article were amended to read as follows:

"Section 4. Dependents of members hereafter becoming members of this corporation will not be eligible to benefits from the corporation until the member has been in good standing for a period of three calendar months beginning with the date of his or her application, provided, however, this section shall not apply to dependents of members in good standing as of the date of beginning business.

Employees who do not apply for membership in the corporation within one calendar month from the date of entrance on duty in one of the Federal branches or agencies in which the corporation is permitted to operate, shall not be eligible to benefits from the corporation until three calendar months after the date of their application, but during said three calendar months no dues shall be chargeable against such member."

Again, on October 4, 1937, the section 4 of Article II was again amended to read:

"Article II, Section 4. Dependents of members hereafter becoming members of this corporation will not be eligible to benefits from the corporation until the member has been in good standing for a period of three calendar months beginning with the date of his or her application, provided, however, this section shall not apply to dependents of members in good standing as of the date of beginning business.

Employees who do not apply for membership in the corporation within one calendar month from the date of entrance on duty in the government service aforesaid shall not be eligible to benefits from the corporation until three calendar months after the date of their application, but during said three calendar months no dues shall be chargeable against such member."

Again, on October 25, 1937, this section was amended to read:

"Article II, Section 4. Dependents of members hereafter becoming members of this corporation will not be eligible to benefits from the corporation until the member has been in good standing for a period of three calendar months beginning with the date of his or her application, provided, however, that this section shall not apply to dependents of members in good standing as of the date of beginning business.

"Employees who do not apply for membership in the corporation within one calendar month from the date of entrance on duty in the government service aforesaid shall not be eligible to benefits from the corporation until three calendar months after the date of their application, but during said three calendar months no dues shall be chargeable against such member."

Again on May 2nd, 1938, it was amended to read:

"Section 4. Dependents of those hereafter becoming members of this corporation will not be eligible to the benefits of this corporation until the member has been in good standing for a period of three calendar months, beginning with the date of his or her application, provided, however, that this section shall not apply to dependents of members in good standing as of the date of beginning operations.

Employees who do not apply for membership within one calendar month from the date of entrance on duty in the government service aforesaid shall not be eligible to the benefits of this corporation until three calendar months after the date of their application, during which three months, however, no dues shall be paid by or be chargeable to such applicants."

The section was again amended on September 19, 1938, to read:

"Section 4. If any dues of a member are not paid within sixty (60) days after their due date, such members automatically at the end of the last day of such period cease to be members and can only be reinstated to membership by action of the Board of Trustees. If any dues of a member are not paid within ten (10) days after their due date, such member shall be refused all services except in case of serious emergency until such dues are paid: Provided, that the Board of Trustees may waive this provision for a period of not in excess of sixty (60) days with respect to any person who has been furloughed from Government service."

Then:

"Section 5. The Board of Trustees shall have authority to reject an application for membership without cause if the applicant is not an employee of the character hereinabove designated, and shall have the right, for just and reasonable cause, to reject the application for membership of any such employee, and shall have the privilege of dropping or expelling members from this organization after not less than fifteen (15) days' notice and a hearing before the Board of Trustees when, in the opinion of said Board of Trustees, the member shall have abused the privileges of the corporation in any way by imposing on the corporation by having medical aid furnished to someone not entitled to the same; or otherwise acting in such manner as to injure the corporation through his wrongful conduct. The Board of Trustees, after hearing as hereinbefore provided, shall be the sole judge of whether the conduct in question warrants expulsion from membership but membership dues shall end upon expulsion."

That was the section as adopted March 22nd, 1937. On May 25th, 1937, that section was amended to read:

"Section 5. The Board of Trustees shall reject an application for membership without cause if the applicant is not an employee of the character hereinabove designated. It shall have the right, for just and reasonable cause, to reject the application for membership of any employee, and it may drop or expel members from this corporation after not less than fifteen (15) days' notice and hearing before the Board of Trustees when, in the opinion of said Board of Trustees,

the members shall have abused the privileges of the corporation in any way by imposing on the corporation by having medical aid furnished to someone not entitled to the same; or otherwise acting in such manner as to injure the corporation through his wrongful conduct. The Board of Trustees, after hearing as hereinbefore provided, shall be the sole judge of whether the conduct in question warrants expulsion from membership and membership dues shall end upon such expulsion."

Then, on May 2nd, 1938, the section was again amended to read:

"Section 5. The Board of Trustees shall reject an application for membership without cause if the applicant is not an employee of the character hereinabove designated. It shall have the right, for just and reasonable cause, to reject any application for membership, and may drop or expel from membership, after not less than fifteen (15) days' notice and hearing before the Board of Trustees, any person who, in the opinion of said Board of Trustees, shall have abused the privileges of his membership or is otherwise guilty of wrongful conduct detrimental to the corporation or its membership. The Board of Trustees, after hearing as hereinbefore provided, shall be the sole judge of whether the conduct in question warrants expulsion from membership. Membership dues shall end upon expulsion."

Then on September 19, 1938, it was again amended to read:

"Section 5. No member may have services procured for a dependent at a time when he himself is not eligible to have services procured for himself.

Section 6. Members whose connection with the Federal branches or agencies aforesaid is severed shall have the privilege of remaining members of the corporation by payment of their monthly dues and assessments direct to the Secretary in advance. If the dues of members coming within this provision are not paid by the 10th day of the month for which such dues are payable, such members automatically lose all rights to service from the corporation and can only be reinstated to membership by action of the Board of Trustees."

This section was amended on May 25th, 1937, to read—as I read it it had been adopted March 22, 1937. Under the amendment of May 25th, it reads:

"Members whose connection with the Federal branches or agencies aforesaid is severed shall have the privilege of remaining members of the corporation by payment of their monthly dues and assessments direct to the Treasurer in advance. If the dues of members are not paid within thirty (30) days after their due date, such members automatically lose all rights to service from the corporation and can only be reinstated to membership by action of the Board of Trustees, provided, however, that notice by registered mail shall be given of this rule to any member whose connection with the Federal branches or agencies aforesaid is severed."

Then, October 4th, 1937, the section was amended to read:

"Article II, Section 6. If the dues of members are not paid within thirty (30) days after their due date, such members automatically cease to be members and can only be reinstated to membership by action of the Board of Trustees."

Then, on October 25, 1937, the section was amended again to read:

"Article II, Section 6. If the dues of members are not paid within sixty (60) days after their due date, such members automatically cease to be members and can only be reinstated to membership by action of the Board of Trustees."

And then on September 19th, 1938, the section was deleted in the by-laws by an amendment of that day.

"Section 7. No new dependents added to dependent list of any member of the corporation shall be eligible for service for a period of three calendar months, with the exception of wives or newly born children who shall be eligible to service from the date of marriage in the case of a wife and from the date of birth in the case of children."

That is the section as adopted March 22nd, 1937. On May 2nd, 1938, the section was amended to read:

"Section 7. No dependent of a member not listed on the dependent list of such member at the time he becomes a

member shall be eligible for benefits hereunder until the expiration of three calendar months after such dependent is placed on the dependent list of such member, with the exception of newly married wives or husbands, or newly born children, who shall be eligible for such benefits from the date of listing provided such listing is made not later than the one calendar month after such marriage or birth. No dependent in any case shall be eligible for benefits at a time when the member himself is not so eligible."

That was the section as amended May 2nd, 1938, and by an amendment of September 19th, 1938, that section was deleted from the by-laws.

Section 8 of this article reads:

"All certificates of membership shall be signed by the president or secretary, and shall be sealed with the corporate seal."

That is as the section was March 22nd, 1937. On May 25th, 1937, the section was amended to read:

"All certificates of membership shall be signed by the President or Secretary, or Assistant Secretary, and shall be sealed with the corporate seal."

And then Section 8 was amended on September 19th, 1938, to read:

"All certificates of membership and membership cards shall be signed by the President or Secretary, or Assistant Secretary, and shall be sealed with the corporate seal."

And then in view of the deletion of Sections 6 and 7, which I have just read and called to your attention, this article became Section 6 of Article II on the 19th day of September, 1938:

Section 9, as it stood and was numbered on March 22nd, 1937, reads:

"In case of liquidation or sale of its assets, the corporation shall have a first lien upon such dividends as may be declared due any members thereof for any indebtedness of the respective holders thereof to the corporation."

On September 19, 1938, the section was amended to read:

"In case of liquidation or sale of its assets, the corporation shall have a first lien upon such dividends as may be declared due any member hereof for any indebtedness of said member to the corporation."

Then, by reason of the deletion of Sections 6 and 7 on September 19th, 1938, this section remained but took the number Section 7, of Article II.

"Section 10. In case of loss or destruction of a certificate of membership, new certificate shall be issued in lieu thereof and shall be plainly marked 'Duplicate' upon its face."

That is as adopted March 22nd, 1937. On May 25th, 1937, the section was amended to read:

"In case of loss or destruction of a certificate of membership, new certificate shall be issued in lieu thereof and shall be plainly marked 'Duplicate' upon its face."

The section was further amended on September 19, 1938, to read:

"In case of loss or destruction of a certificate of membership or a membership card, a new certificate or membership card shall be issued in lieu thereof and shall be plainly marked 'Duplicate' upon its face."

This section took the new number 8 under the amendment of September, 1938, and for the reason already stated—because of the deletion of Sections 6 and 7.

"Article III.

"Membership Meetings.

"Section 1. An annual meeting of the members shall be held at 7:30 o'clock P. M., on the 3rd Monday in January in each year, beginning with the year 1938, at the principal office of the corporation, provided, however, that whenever such day shall fall upon a legal holiday, the meeting shall be held on the next succeeding business day. At such meeting the members shall elect Trustees to serve until their successors shall be elected and qualified."

This section was thereafter amended on May 25, 1937, to read as follows:

"Section 1. An annual meeting of the members shall be held at 7:30 o'clock P. M. on the 3rd Monday in January in each year, beginning with the year 1938, at a place in Washington, D. C., to be designated by the Board of Trustees, provided, however, that whenever such day shall fall upon a legal holiday, the meeting shall be held on the next succeeding business day. If the annual meeting of the membership be not held as herein prescribed, the election of Trustees may be held at any meeting thereafter called pursuant to these by-laws. At such meeting the members shall elect Trustees to serve until their successors shall be elected and qualified."

"Section 2. A special meeting of the members may be called at any time by the President or Secretary, and, in their absence, by the Vice President; or by the Trustees. It shall be the duty of the Trustees, President or Vice President to call such a meeting whenever so requested by 5% of the members."

That section was amended on May 25, 1937, to read as follows:

"Section 2. A special meeting of the members may be called at any time by the President or Secretary, and, in their absence, by the Vice President; or by the Trustees. It shall be the duty of the Trustees, or President or Vice President to call such a meeting whenever so requested by written petition of five per centum (5%) of the members of the corporation."

"Section 3. Notice of the time and place of all annual and special meetings shall be mailed by the Secretary to each member at the latter's last known address five (5) days before the date thereof."

That section was amended on May 25, 1937, to read as follows:

"Notice of time, place and purpose of all annual and special meetings shall be mailed or delivered by the Secretary or Assistant Secretary to each member at the latter's office or the last known address five (5) days before the date thereof.

"Section 4. The President, or, in his absence, the Vice President, shall preside at all such meetings."

"Section 5. At every such meeting each member shall be entitled to cast one vote, which vote may be cast by him either in person, or by proxy. All proxies shall be in writing, and shall be filed with the Secretary and by him entered of record in the minutes of the meeting.

That section was amended on May 25, 1937, to read as follows:

"Section 5. At every such meeting each member shall be entitled to cast one vote, which vote may be cast by him either in person, or by proxy. All proxies shall be in writing, and shall be filed with the Secretary or Assistant Secretary and by him entered of record in the minutes of the meeting. At all meetings of members, the voting may be by viva voce, with exception of the election of Trustees. A complete list of the members entitled to vote at the ensuing election of the Board of Trustees arranged in alphabetical order shall be prepared by the Secretary or Assistant Secretary who shall have charge of the membership list; and such list shall be filed in the office of the corporation at least ten (10) days before every election, and shall, during the usual hours for business and during the whole time of the said election, be open to the examination of any member.

"Section 6. Every member shall have the right to vote, in person or by proxy, for as many persons as there are Trustees to be elected.

That section was amended on May 25, 1937, to read as follows:

"Section 6. Every member shall have the right to vote, in person or by proxy in any election or at any meeting of the Association."

And it was amended on May 2, 1938, to read as follows:

"Section 6. Every member shall have the right to vote, in person or by proxy, in any election or at any meeting of the corporation."

"Section 7. A quorum for the transaction of business at any such meeting shall consist of at least 20% of the total

number of members of the corporation personally present, who are in good standing, but the members present at any meeting, though less than a quorum, may adjourn the meeting to a future time."

That section was amended on May 25, 1937, to read as follows:

"Section 7. A quorum for the transaction of business at any regularly called meeting shall consist of those present at any regular or special meeting."

"Article IV.

"Trustees.

"Section 1. The business and property of the corporation shall be managed and controlled by a Board of Trustees who shall be elected annually by the members on the 3rd Monday of January of each year beginning with the 3rd Monday in January, 1938. Each Trustee shall be a member of the corporation and shall receive no compensation for his services as a Trustee. Severance of such relationship by resignation or otherwise shall operate as a resignation of all office held by such Trustee.

That section was amended on May 25, 1937, to read as follows.

"Section 1. The business and property of the corporation shall be managed and controlled by a Board of eleven (11) Trustees; two of whom shall be selected by and at the pleasure of the Federal Home Loan Bank Board from the members, and the others to be elected annually by the members on the 3rd Monday of January of each year beginning with the 3rd Monday in January, 1938, provided, however, that whenever such day shall fall upon a legal holiday, the election shall be held on the next succeeding business day. Each Trustee shall be a member of the corporation and shall receive no compensation for his services as a Trustee, and severance of such relationship by resignation or otherwise shall operate as a resignation of all offices held by such Trustee."

"Section 2. The Trustees shall be elected by ballot, cast by the members of this corporation and each member shall be furnished with one ballot and an envelope in which to enclose the same, and these ballots shall be deposited at a

place or places designated by this Board before each annual election on the date thereof. The election shall be by a plurality vote and those members of the corporation receiving the largest number of votes from members hereof eligible to cast ballots for them, as hereinafter designated, shall be declared elected."

"The Board of Trustees shall appoint election tellers chosen from the membership who shall meet and canvass the vote on the day or the day following the election but no ballot shall be received which has not been cast on the election day."

That section was amended on May 25, 1937, to read as follows:

"Section 2. The nine (9) elective Trustees shall be elected by ballot, cast by the members of this corporation in person or by proxy and each member shall be furnished with one ballot and an envelope in which to enclose the same, and these ballots shall be deposited at the place designated by the Board for the annual meeting on the date thereof. The election shall be by a plurality vote and those members of the corporation receiving the largest number of votes from members hereof eligible to cast ballots for them, as hereinafter designated, shall be declared elected. Four (4) inspectors of election, none of whom shall be a Trustee, officer or employee of the corporation, shall be appointed by the Board of Trustees before or at each meeting of the members of the corporation at which an election of Trustees or amendment to the by-laws shall take place; if no such appointment shall have been made, or if the inspectors of election appointed by the Board refuse to act or fail to attend, then the appointment shall be made by the presiding officer at the meeting. The inspectors of election shall receive and take in charge all proxies and ballots and shall decide all questions of election touching upon the qualification of voters, the validity of proxies and the acceptance and rejection of votes. In case of a tie vote by the inspectors on any question, the presiding officer shall decide."

"Section 3. The Trustees elected at the next annual election shall be classified with respect to the time for which they shall severally hold office by dividing them into three classes and if the number of Trustees be later increased to eleven members, the first class to consist of four (4) mem-

bers, the second class of a like number, and the third class of three (3) members of the Board of Trustees. The Trustees of the first class shall be elected for a term of one year; the Trustees of the second class for a term of two years; and the Trustees of the third class for a term of three years; and at each succeeding annual election the successors to the class of Trustees whose terms shall expire in that year shall be elected to hold office for the term of three years so that the term of office of one class of Trustees shall expire each year."

That section was amended on May 25, 1937, to read as follows:

"The nine (9) Trustees elected at the first annual election shall be classified with respect to the time for which they shall severally hold office by dividing them into three classes of three members each. The Trustees of the first class shall be elected for a term of one year; the Trustees of the second class for a term of two years; and the Trustees of the third class for a term of three years; and at each succeeding annual election the successors to the class of Trustees whose terms shall expire in that year shall be elected to hold office for the term of three years so that the term of office of one class of Trustees shall expire each year. The appointees of the Federal Home Loan Bank Board shall serve at the pleasure of the Federal Home Loan Bank Board."

"Section 4. The regular meetings of the Trustees shall be held in the principal office of the corporation immediately after the adjournment of each annual membership meeting; and also on the 1st Monday of each month at the hour of 8:00 o'clock P. M., provided, however, that whenever such day shall fall upon a legal holiday, the meeting shall be held on the next succeeding business day."

That section was amended on May 25, 1937, to read as follows:

"Section 4. The regular meetings of the Trustees shall be held at a place to be designated by standard rule of the Board of Trustees immediately after the adjournment of each annual membership meeting; and also on the 1st Monday of each month at the hour of 8:00 o'clock P. M., provided, however, that whenever such day shall fall upon a legal holiday, the meeting shall be held on the next succeeding business day."

"Section 5. Special meetings of the Board of Trustees, to be held in the principal office of the corporation, may be called by the President or Secretary; and in their absence by the Vice President or by any three (3) members of the Board. By unanimous consent of the Trustees, special meetings of the Board may be held without notice, at any time and place."

That section was amended on May 25, 1937, to read as follows:

"Section 5. Special meetings of the Board of Trustees, to be held in the principal office of the corporation, may be called by the President or Secretary; and in their absence by the Vice President or by any three (3) members of the Board."

And it was amended on November 21, 1938, to read as follows:

"Section 5. Special meetings of the Board of Trustees, may be called by the President or Secretary; and in their absence by the Vice President or by any three (3) members of the Board."

"Section 6. Notice of all regular and special meetings, except those specified in Section 4 of this article, shall be mailed to each Trustee, by the Secretary, at least five (5) days previous to the time fixed for the meeting. All notices of special meetings shall state the purpose thereof."

That section was amended on May 25, 1937, to read as follows:

"Section 6. Notice of time, place and purpose of all special meetings shall be mailed to each Trustee, by the Secretary or Assistant Secretary, at least five (5) days previous to the time fixed for the meeting. By unanimous consent of the Trustees special meetings of the Board may be held without notice at any time and place. When a meeting is adjourned it shall not be necessary to give any notice of the adjourned meeting or of the business to be transacted at an adjourned meeting other than by announcement at the meeting at which such adjournment is taken."

"Section 7. A quorum for the transaction of business at any regular or special meeting of the Trustees shall consist

of a majority of the members of the Board, personally present, but a majority of those present at any regular or special meeting shall have power to adjourn the meeting to a future time."

That section was amended on May 25, 1937, to read as follows:

"Section 7. A majority of the Trustees in office shall be necessary to constitute a quorum for the transaction of business, and the acts of a majority of the Trustees present at a meeting, at which a quorum is present, shall be the acts of the Board of Trustees."

"Section 8. The trustees shall elect the officers of the corporation, and fix their salaries; such election to be held at the Trustees' meeting following each annual membership meeting; provided, however, that the first election of officers may be held at the convenience or pleasure of the Board. Any officer may be removed at any time by a two-thirds vote of the full Board of Trustees."

That section was amended on May 25, 1937, to read as follows:

"Section 8. The Trustees shall elect the officers of the corporation; such election to be held at the Trustees' meeting following each annual membership meeting. Any officer may be removed at any time by a two-thirds vote of the full Board of Trustees."

"Section 9. The Trustees may, by resolution, appoint five (5) members of the board as an Executive Committee, to manage the business of the corporation during the interim between meetings of the Board, two of whom shall consist of members selected by the Federal Home Loan Bank Board."

That section was amended on May 25, 1937, to read as follows:

"Section 9. The Trustees may, by resolution, appoint five (5) members of the Board as an Executive Committee, to manage the business of the corporation during the interim between meetings of the Board, two of whom shall consist of members selected by the Federal Home Loan Bank Board.

The President shall be ex officio a member of the Executive Committee."

"Section 10. Any vacancy in the Board of Trustees caused by death, resignation, or otherwise, shall be elected by the Board from the Association membership to fill the vacancy at any regular or special Trustees' meeting, to serve until the next annual election, at which time the members shall elect a Trustee for the remainder of the term for which the vacating member was elected."

That section was amended on May 25, 1937, to read as follows:

"Section 10. Any vacancy in the Board of Trustees caused by death, resignation, or otherwise, shall be filled by the Board from the Association membership at any regular or special Trustees' meeting, to serve until the next annual election, at which time the members shall elect a Trustee for the remainder of the term for which the vacating member was elected, provided, however, that the Federal Home Loan Bank Board shall fill the positions vacated by its appointees."

"Section 11. At each annual membership meeting the Trustees shall submit a statement of the business done during the preceding year, together with a report of the financial condition of the corporation, and of the condition of its tangible property."

That section was amended on May 25, 1937, to read as follows:

"Section 11. At each annual membership meeting the Trustees shall submit a statement of the business done during the preceding year, together with a report of the financial condition of the corporation, and of the condition of its tangible property. They shall provide a full and complete operating statement and balance sheet."

"Article V.

"Officers.

"Section 1. The officers of this corporation shall be President, a Vice President, a Secretary, and Assistant, and a Treasurer and Assistant, who shall be elected until the next

annual membership meeting and thereafter for the term of one year, and shall hold office until their successors are duly elected and qualified. No one shall be eligible to the office of President or Vice President who is not a Trustee of the corporation; and any such officer who ceases to be a Trustee shall cease to hold office as President or Vice President as soon as his successor is elected and qualified. The offices of Secretary and Treasurer or the offices of Assistant Secretary and Assistant Treasurer may be held by one person."

The heading of Article V was amended on May 25, 1937, to read as follows:

"Article V.

"Officers and Personnel."

Section 1 was amended on May 25, 1937, to read as follows:

"Section 1. The officers of the corporation shall be President, a Vice President, a Secretary and Assistant Secretary, and a Treasurer and Assistant Treasurer, who shall be elected until the first annual membership meeting and thereafter for the term of one year, and shall hold office until their successors are duly elected and qualified. No one shall be eligible to the office of President or Vice President who is not a Trustee of the corporation; and any such officer who ceases to be a Trustee shall cease to hold office as President or Vice President as soon as his successor is elected and qualified. The offices of the Secretary and Treasurer or the offices of Assistant Secretary and Assistant Treasurer may be held by one person."

"Section 2. The President shall preside at all Trustees' and Membership meetings; shall have general supervision over the affairs of the corporation and over the other offices; if required, shall sign certificates of membership and written contracts of the corporation, and countersign all checks; and shall perform all such other duties as are incident to his office. In case of the absence or disability of the President, his duties shall be performed by the Vice President."

That section was amended on May 25, 1937, to read as follows:

"Section 2. The President shall preside at all Trustees' and Membership meetings; shall have general supervision

over the affairs of the corporation and over the other officers; if required, shall sign certificates of membership and shall sign written contracts of the corporation, and countersign all checks; and shall perform all such other duties as are incident to his office. In case of the absence or disability of the President, his duties shall be performed by the Vice President."

"Section 3. The Secretary, or Assistant Secretary, shall issue notices of all Trustees and Membership meetings and shall attend and keep the minutes of the same; shall be custodian of the corporate records and papers and of the seal of the corporation; shall attest with his signature and impress with the corporate seal all certificates of membership and written contracts of the corporation as directed by the President or Board of Trustees; and shall perform all such other duties as are incident to his office."

That section was amended on May 25, 1937, to read as follows:

"Section 3. The Secretary, or, in his absence, or if the Board of Trustees directs, the Assistant Secretary, shall issue notices of all Trustees' and Membership meetings and shall attend and keep the minutes of same; shall be custodian of the corporate records and papers and of the seal of the corporation; shall attest with his signature and impress with the corporate seal all certificates of membership and written contracts of the corporation as directed by the President or Board of Trustees; and shall perform all such other duties as are incident to his office."

"Section 4. The Treasurer shall be the financial and administrative officer of the corporation, having custody of all monies, funds, securities, evidence of indebtedness, and other valuable documents of the corporation. He shall receive and give receipts for money paid in on account of the corporation, and shall pay out of the funds on hand all just debts of whatever nature. He shall keep regular books of account and detailed record of the members and their standing. He shall render a full financial statement of the affairs of the corporation monthly, or when called upon by the President or Board of Trustees. He shall sign all checks, notes, drafts, or orders for the payment of money and he shall perform all such other duties as may be incident to

the office of the Treasurer, or as may be imposed on him by the Board of Trustees. He shall give the corporation a bond in such amount and with such surety as the Board shall prescribe, conditioned upon the faithful performance of the duties of his office. In the absence or incapacity of the Treasurer, the Assistant Treasurer shall act in his place or stead. Such safety deposit boxes as may be necessary shall be provided for the use of the Treasurer, to which the President may at all times have access."

That section was amended on May 25, 1937, to read as follows:

"Section 4. The Treasurer shall be the financial officer of the corporation, having custody of all monies, funds, securities, evidence of indebtedness, and other valuable documents of the corporation. He shall receive and give receipts for money paid in on account of the corporation, and shall pay out of the funds on hand all just debts of whatever nature. He shall keep regular books of account and detailed record of the members and their standing. He shall render a full financial statement of the affairs of the corporation monthly, or when called upon by the President or Board of Trustees. He shall sign all checks, notes, drafts, or orders for the payment of money and he shall perform all such other duties as may be incident to the office of the Treasurer, or as may be imposed on him by the Board of Trustees. He shall give the corporation a bond in such amount and with such surety as the board shall prescribe, conditioned upon the faithful performance of the duties of his office. In the absence or incapacity of the Treasurer, the Assistant Treasurer shall act in his place or stead. Such safety deposit boxes as may be necessary shall be provided for the use of the Treasurer, to which the President or a majority of the Trustees may at all times have access."

Article V was amended on May 25, 1937, to include the following:

"Section 5. The Board of Trustees shall employ a competent, qualified Doctor of Medicine as the Medical Director, and such assistants, orderlies, nurses or other help necessary to the proper functioning of the corporation."

Section 5 of Article V was amended on May 2, 1938, to read as follows:

"Section 5. The Board of Trustees shall contract for and in behalf of the members of this corporation, with physicians duly licensed to practice their profession in the District of Columbia, who shall render such service to the members as may be provided in said contract. One of said physicians shall be designated as the Medical Director, who, with the approval of the Trustees, may engage the services of such assistants, orderlies, nurses, or other help, in order to properly render the services contracted for."

Article V was amended on May 25, 1937, to include the following:

"Section 6. The Medical Director shall render such reports as the Board of Trustees shall require."

Section 6 of Article V was amended, on May 2, 1938, to read as follows:

"Section 6. The Board of Trustees shall in no way regulate or supervise the practice of medicine by any physician with whom it contracts for the care of members nor shall it in any way supervise, regulate or interfere with the usual professional relationship between such physician and his patient member, and every such contract entered into by and between a physician and the corporation shall contain a positive covenant to that effect."

"Article VI.

"Finance.

"Section 1. The funds of the corporation shall be deposited in such bank or trust company as the Trustees shall designate, and shall be withdrawn only upon the check or order of the Treasurer or Assistant Treasurer, countersigned by the President or Vice President. The Board shall cause audit of the books and accounts of the corporation to be made annually or oftener as it may consider proper or necessary, either by an Audit Committee appointed by the Board from the membership or by the employment of a private Certified Public Accountant."

That section was amended on May 25, 1937, to read as follows:

"Section 1. The funds of the corporation shall be deposited in such bank or trust company as the Trustees shall

designate, and shall be withdrawn only upon the check or order of the Treasurer or Assistant Treasurer, countersigned by the President or Vice President. The Board of Trustees shall cause an audit of the books and accounts of the corporation to be made annually or oftener as it may consider proper or necessary, either by an Audit Committee appointed by the Board from the membership or by the employment of a Certified Public Accountant."

"Article VII.

"Dues.

"Section 1. The dues for membership in this corporation shall be Three Dollars and Thirty Cents ($3.30) per month for married persons or single persons having dependents, and Two Dollars and Twenty Cents ($2.20) per month for single persons having no dependents, and shall be paid in advance semi-monthly. Where permitted, the corporation shall be given the right to require deduction for its use and benefit from the employee's wages due him from any of the federal branches or agencies by which he or she is employed the amount of his current dues together with any payment for back dues owed to the corporation.

That section was amended on April 6, 1937, to read as follows:

"Section 1. There shall be two classes of membership, i. e., (1) family membership; and (2) individual membership. Family membership shall include married or single members with dependents as hereinafter defined and the dues for membership of such class shall be $3.30 per month. Individual membership shall include married or single members having no declared dependents, and the dues for membership of such class shall be $2.20 per month."

Section 1 of Article VII was amended on September 19, 1938, to read as follows:

"Section 1. A member may have services procured for himself alone or for himself and any or all of his eligible dependents. A dependent is a member's spouse or a person related by blood, marriage or adoption to the member and who is supported by and lives with that member. A child dependent is a dependent who has not attained the age of 21.

"(a) Whenever a person ceases to qualify as a dependent of a member no further services shall be procured with respect to such person after the expiration of the month following the month in which he becomes disqualified.

"(b) Services shall be procured for and dues paid with respect to a child born to such member (unless previous notice to the contrary has been given the Association in writing by the member). For purposes of determining dues a child or other dependent shall remain a dependent so long as he remains eligible, until written notice to the contrary is received from the member. Any increase in dues shall be effective the first day of the month following the month in which such child is born, attains age 18 or attains age 21, as the case may be. In the event of death of a dependent or notice that such dependent is no longer to have service, the reduction in a member's dues shall be effective on the first day of the succeeding month. In the case of the death of a member or upon his written notice to the Association of his resignation, all dues shall cease on the first day of the month succeeding such death or the effective date of such notice of resignation, and after the first of such month no further services shall be procured for the member's dependents.

"(c) In case notice of withdrawal of a person from membership or withdrawal of a dependent is received in the office of the Association later than the tenth day of the month, the membership dues and the services shall cease or be decreased on the first day of the second month succeeding that in which such notice is received. It shall be the duty of every member to give written notice to the Association of any fact that would change the rate of dues or other monies payable by him.

"(d) Whenever a member desires to have services procured for any dependent (except a new born baby) who was not on"—

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"(had not previous to) September 1, 1938 (been) listed by him as a dependent in connection with his membership, he shall make application, tender $1.00 for application fee and, unless such dependent is rejected because of physical con-

dition, such member shall thereupon be entitled to have services procured for such dependent. Such services shall be procured on and after, and the dues shall be increased on, the first day of the month succeeding the date of physical examination.

"(e) Whenever any dependent desires and is eligible to become a member, such person may apply for membership, and such application shall be given preferred consideration. Medical examination in such cases and in other cases where circumstances are unusual, may be waived for such person and/or his dependents at the option of the Board of Trustees."

Section 1(d) of Article VII was amended, on October 3, 1938, to read as follows:

"Section 1(d). Whenever a member desires to have services procured for any dependent (except a new born baby) who was not on September 1, 1938 listed by him as a dependent in connection with his membership, he shall make application, tender $1.00 for application fee and, unless such dependent is rejected because of physical condition, such member shall thereupon be entitled to have services procured for such dependent. Such services shall be procured on and after, and the dues shall be increased on, the first day of the month succeeding the date of physical examination."

Section 1(b) of Article VII was amended on November 21, 1938, to read as follows:

"Section 1(b). Services shall be procured for and dues paid with respect to a child born to such member (unless previous notice to the contrary has been given the Association in writing by the member.) For purposes of determining dues a child or other dependent shall remain a dependent so long as he remains eligible, until written notice to the contrary is received from the member. Any increase in dues shall be effective the first day of the month following the month in which such child is born, attains age 18 or attains age 21, as the case may be. In the event of death of a dependent or notice, received prior to the 10th of the month, that such dependent is no longer to have service, the reduction in a member's dues shall be effective on the first

day of the succeeding month. In the case of the death of a member or upon his written notice to the Association of his resignation, received prior to the 10th day of the month, all dues shall cease on the first day of the month succeeding such death or the receipt of such notice of resignation, and after the first of such month no further services shall be procured for the member's dependents."

"Section 2. Members who join the corporation hereafter shall, for the first month, be charged dues for a full month if their application for membership is dated between the 1st and 15th of the month, and shall be charged dues for one-half month if their application is dated between the 16th and last day of the month."

Section 2 of Article VII was amended on September 19, 1938, to read as follows:

"Section 2.

"(a) All members shall be required to pay a membership fee of $10 which shall be paid for at the rate of not less than $1.00 per month. The first installment shall be paid not later than the due date of the member's first monthly dues following the adoption of this amendment.

"(b) Upon full payment of the membership fee a suitable certificate shall be issued to the member.

"(c) Such certificate may be transferred, upon the payment of a transfer fee in such amount as is fixed by Board regulations, to any person who is accepted as a member, provided that the person whose certificate is transferred is a person not indebted to the Association and is a member in good standing who (1) has been a member two years, or (2) who has become disqualified from membership because of severance from Government service or (3) who removes from the territory served by the Association. The transferee of a membership certificate shall by virtue of such transfer be entitled to a credit of $10 toward his membership fee. On death of a member his certificate shall be non-transferable and shall be null and void. Whenever a member is no longer employed by the executive branch of the Federal Government, or moves from the area served by the Group Health Association, at the sole discretion of

the Trustees, such person may be repaid his $10 membership fee or any portion he has paid the Corporation.

"(d) Proceeds of membership fees shall, in so far as possible, be used only for purchase and maintenance of equipment and other property."

Article VII was amended on September 19, 1938, to include the following:

"Section 3.

"(a) After August 1, 1938, any person desiring to become a member shall make payment of an application fee of $5.00, plus $1.00 for each dependent with respect to whom he desires to have services secured and shall fill out an application on a prescribed blank or blanks. If, after review of application and medical examination of all the persons on whose behalf services are requested, the application is not accepted, this fee shall be returned, unless the person applying is otherwise eligible for membership and desires to become a member under conditions stated in the next subsection.

"(b) In the case of applications not otherwise generally acceptable by reason of the physical condition of the member or a dependent, the Association, upon the recommendation of the Medical Director, may make special membership arrangements with such applicant with respect to the services to be procured for him by the Association."

Article VII was amended, on September 19, 1938, to include the following:

"Section 4. After August 1, 1938, every member who desires to procure services for a dependent not listed as such shall make application on a prescribed form and pay a $1.00 application fee, which shall in no case be returned. If, after review of the application and medical examination of such dependent, the dependent is not generally acceptable by reason of physical condition, the Association upon the recommendation of the Medical Director may make special membership arrangements."

Article VII was amended, on September 19, 1938, to include the following:

"Section 5. Membership dues shall for September 1938 and thereafter be payable the first of each month and shall be as follows:

Single member or head of family	$2.20
Husband or wife	1.80
Child dependents under 18 (one or more)	1.00
Child dependents, 18 to 21 (each)	1.00
Adult dependents over 21 (each)	2.00

New memberships shall become effective and dues payable on the first day of the month following acceptance of the person for membership or upon the 16th day of the same month if the Board so directs."

Article VII was amended, on September 19, 1938, to include the following:

"Section 6. Any indebtedness of a member to the Association shall be added to and considered a part of the dues for the month succeeding that in which the indebtedness was incurred provided, however, that the Board of Trustees in its discretion may permit the payment of any indebtedness to be made in installments or forgive a portion or all of said indebtedness when the Trustees find that in equity and good conscience such action shall be taken. In the case of indebtedness other than for the monthly dues, the member shall be promptly notified of the amount of the indebtedness."

Article VII was amended, on September 19, 1938, to include the following:

"Section 7. Except by amendment of these By-laws, no fees, dues or assessments of any kind not herein provided, shall be required of any member of the Association.

"Article VIII

Resignations

Section 1. Any member of this corporation may withdraw therefrom by resignation and shall owe in such case dues for only thirty (30) days from the date of his or her resignation, he or she to have the privileges of membership during said thirty (30) day period. (As adopted March 22, 1937.)"

Section 1 of Article VIII was amended on May 25, 1937, to read as follows:

"Section 1. Any member of this corporation may withdraw therefrom by resignation and shall owe in such case dues for only thirty (30) days from the date of his or her resignation, he or she to have the privileges of membership during said thirty (30) day period, provided, however, that the member may withdraw his resignation in writing within the said period."

Article VIII was repealed on September 19, 1938.

"Article IX

Amendments

Section 1. Amendments to these by-laws may be made, by affirmative vote of a two-thirds majority of the Trustees of the corporation present and voting at any regular meeting or at any special meeting when the proposed amendment has been set out in the notice of such meeting. (As adopted March 22, 1937)"

Section 1 of Article IX was amended, on May 25, 1937, to read as follows:

"Section 1. Amendments to these by-laws may be made, by affirmative vote of a two-thirds majority of the Trustees of the corporation at any regular meeting or at any special meeting when the proposed amendment has been set out in the notice of such meeting."

Section 1 of Article IX was amended, on September 19, 1938, to read as follows:

"Section 1. Amendments to these by-laws shall be made, by affirmative vote of a two-thirds majority of the Trustees of the Association at any regular meeting of the Trustees or at any special meeting of the Trustees when the proposed amendment has been set out in the notice of such meeting; except, that any amendment to this article, or any amendment required by section 9 of article VII shall become effective only after written notice to members and the affirmative vote for such amendment by a majority of those voting."

Section 1 of Article IX was amended, on October 3, 1938, to read as follows:

"Section 1. Amendments to these by-laws shall be made, by affirmative vote of a two-thirds majority of the Trustees of the Association at any regular meeting of the Trustees or at any special meeting of the Trustees when the proposed amendment has been set out in the notice of such meeting; except, that any amendment to this article, or any amendment required by section 7 of article VII shall become effective only after written notice to members and the affirmative vote for such amendment by a majority of those voting.

Article X

Benefits.

Section 1. To be able to avail themselves of medical and surgical service, the members must be located in, or its closely and adjacent territory, or must come to, the City of Washington, D. C. (As adopted March 22, 1937)"

Section 1 of Article X was amended, on April 6, 1937, to read as follows:

"Section 1. The medical service to be rendered to members and dependents by the corporation shall be as follows:

Medical and surgical examinations and treatments, including examinations in special departments, such as refractions of eyes; laboratory tests, X-ray examinations, surgical operations, confinement cases and professional consultations, nursing and ambulance facilities, house calls, and hospitalization in a semi-private room (2 bed room) limited to a period not to exceed 21 days for any one illness. However, members desiring to occupy a private room may do so in which case the corporation will contribute the sum of $4.00 per day toward the expense of such room for such period. In all hospital cases, the corporation will pay for semi-private room (2 bed room) service only, except in the case of infectious or contagious diseases, in which case a maximum of $4.00 per day will be paid for said period.

The extent that medical service relating to the foregoing items will be furnished to members shall be determined and prescribed by the Medical Director or his representatives in each individual case."

Section 1 of Article X was amended, on May 25, 1937, to read as follows:

"Section 1. The medical service to be rendered to members and dependents by the corporation shall be as follows:

Medical and surgical examinations and treatments, including examinations in special departments, such as refractions of eyes; laboratory test, X-ray examinations, surgical operations, confinement cases and professional consultations, nursing and ambulance facilities, house calls, and hospitalization in a semi-private room (2 bed room) limited to a period not to exceed 21 days for any one illness. However, members desiring to occupy a private room may do so, in which case the corporation will contribute the sum of $4.00 per day toward the expense of such room for such period. In all hospital cases, the corporation will pay for semi-private room (2 bed room) service only, except in the case of infectious or contagious diseases, in which case a maximum of $4.00 per day will be paid for such period, not exceeding 21 days.

The extent that medical service relating to the foregoing items will be furnished to members shall be determined and prescribed by the Medical Director or his representatives in each individual case."

Section 1 of Article X was amended, on October 25, 1937, to read as follows:

"Article X, Section 1. The medical service to be rendered to members and dependents by the corporation shall be as follows:

Medical and surgical examinations and treatments, including examinations in special departments, such as refractions of eyes, laboratory tests, X-ray examinations, surgical operations, confinement cases and professional consultations, nursing and ambulance facilities, house calls, and hospitalization in a semi-private room (two-bed room) or a private room, limited in either case to a period not to exceed 21 days for any one illness; provided, however, that each member desiring to occupy a private room shall reimburse the corporation for so much of the cost of such room as shall exceed the sum of $4.00 per day; provided, further, that such member shall make such payments to assure such

reimbursement as the corporation shall require, and provided, that the benefits provided outside of the territory of the association shall be limited to the provision of a hospital room for the time and as is herein provided.

The extent that medical service relating to the foregoing items will be furnished to members shall be determined and prescribed by the Medical Director or his representatives in each individual case."

Section 1 of Article X was amended, on May 2, 1938, to read as follows:

"Section 1. The contract or contracts to be made by this corporation on behalf of the members thereof with physicians, as provided in Section 5 of Article V, or with others, shall provide for the following services to members:

Medical and surgical examinations and treatments, including examinations in special departments, such as refractions of eyes, laboratory tests, X-ray examinations, surgical operations, confinement cases, and professional consultations, nursing and ambulance facilities, house calls, and hospitalization in a semi-private room (two-bed room) or a private room, limited in either case to a period not to exceed 21 days for any one illness; provided, however, that each member desiring to occupy a private room or a semi-private room of his own choice shall pay so much of the cost of such room as shall exceed the sum of $4.00 per day; provided, further, that such member shall make such advance payments to assure the aforesaid reimbursement as the Trustees shall require; and provided, further, that the benefits provided outside of the territory of the association shall be limited to the provision of a hospital room for the time and as is herein provided.

Members or dependents in order to avail themselves of medical and surgical service shall come to the doctor's office if such is possible from the nature of their illness. Doctors will answer necessary house calls within a radius of ten miles from the District of Columbia line, except that the Medical Director may provide for house calls not exceeding twenty miles. Members will furnish such doctor with any information he may request relative to their condition and membership and should, at all times, have available their membership card for identification.

The extent that medical service relating to the foregoing items will be furnished to members shall be determined and prescribed by the Medical Director or his representatives in each individual case."

Section 1 of Article X was amended, on September 19, 1938, to read as follows:

"Section 1. The contract or contracts to be made by this corporation on behalf of the members thereof with physicians, as provided in these by-laws, or with others, shall provide for the following services:

Medical and surgical examinations and treatments, including examinations in special departments, such as refractions of eyes, laboratory tests, X-ray examinations, surgical operations, confinement cases, and professional consultations, nursing and ambulance facilities, house calls and hospitalization in a semi-private (two-bed room) or a private room, limited in either case to a period not to exceed 21 days for any one illness or accident and not to exceed a total of 42 days for any member or dependent during any one calendar year; provided, however, that when a member desires a private room or a semi-private room of his own choice for himself or his dependent he shall pay so much of the cost of such room as shall exceed the sum of $4.00 per day; provided, further, that each member shall make such advance payments or other arrangements to assure the said payment as the Trustees shall require; and provided, further that the services procured outside of the territory of the Association shall be limited to the provision of hospital facilities for the time and as is herein provided.

No hospitalization, and no service except that given under such contract or contracts shall be procured for any member or dependent, save upon prior written authorization by the Medical Director; Provided, that in cases of emergency, subsequent ratification by the Medical Director shall have the same effect as prior authorization; provided, however, that the Medical Director may not ratify any services save hospitalization procured outside of the service area.

Any hospitalization procured shall be limited in time to the date of the patient's discharge or such shorter time as the Medical Director may deem proper.

Hospitalization shall be construed to mean: (a) bed and board in a hospital, (b) general nursing care, (c) use of

the operating room or delivery room when necessary, (d) services of an anesthetist, (e) ordinary surgical dressing, (f) ordinary medications, and (g) routine laboratory examinations; except, that where hospitalization is procured outside the service area or without prior authorization by the Medical Director, no more than $15 may be allowed for the use of the operating or delivery room and no more than $10 may be allowed for the services of an anesthetist.

Members or dependents, in order to avail themselves of medical and surgical service, shall report to the clinic if such is possible from the nature of their illness. Doctors will answer necessary house calls within ten miles from the District of Columbia line, as provided in this article, and the Medical Director may provide for house calls not exceeding twenty miles. Members will furnish such doctor with any information he may request relative to their condition and membership and should, at all times, have available their membership cards for identification.

The extent that medical service relating to the foregoing items will be furnished shall be determined and prescribed by the Medical Director or his representative in each individual case.

Section 2. Any person referred to herein as a dependent, to be eligible to the benefits of the corporation, must be totally dependent upon the member of the corporation for a livelihood at the time of such person's disability and before need of medical service. However, under this provision persons who are working and receiving compensation for their services are not dependent, with the exception of wife or husband, or school children who work during the summer months only, may be considered dependent. Any member who accepts medical attention from a corporation doctor, or who has medical services performed for any person who he claims is dependent upon him and who is found not to be entitled to such medical service, shall reimburse the corporation for any payment the corporation may have made on his account, and, further, shall pay the corporation for the services of the doctor who attended the case, or the corporation may cause the same to be deducted from the wages due such employee as provided in Section 1 of Article VI of these by-laws. (As adopted March 22, 1937)"

Section 2 of Article X was amended, on April 6, 1937, to read as follows:

"Section 2. The following medical service will not be furnished by the corporation:

(1) Treatment of industrial accident cases;

(2) Surgery of the brain or nervous system;

(3) Mental cases, tuberculosis, drug or alcohol addiction; these cases will be treated only up to the time that the Medical Director recommends confinement in an institution."

Section 2 of Article X was amended, on May 25, 1937, to read as follows:

"Section 2. The following medical service will not be furnished by the corporation:

(1) Treatment of industrial accident cases;

(2) Surgery of the brain or nervous system;

(3) After the time that the medical director recommends confinement in an institution in mental, tubercular, drug or alcohol addiction cases."

Section 2 of Article X was amended, on May 2, 1938, to read as follows:

"Section 2. The contract or contracts to be made by this corporation on behalf of the members, with physicians, as provided in Section 5 of Article V of these by-laws, or with others, shall not provide for the following services to members:

(1) Treatment of industrial accident cases;

(2) Surgery of the brain or nervous system;

(3) Any treatment after the time that the Medical Director recommends commitment to an institution in mental, tubercular, drug or alcohol addiction cases."

Section 2 of Article X was amended, on September 19, 1938, to read as follows:

"Section 2. The contract or contracts to be made by this Association on behalf of the members, with physicians, as

provided in these By-laws, or with others, shall not provide for the following services:

(1) Treatment of industrial accident cases where treatment is provided under Federal or State Employees Compensation Laws to the extent of such provision;

(2) Surgery of the brain or nervous system;

(3) Any treatment after the time that the Medical Director recommends commitment to or hospitalization in an institution in mental, tubercular, drug, or alcohol addiction cases.

Section 3. In all hospital cases, the corporation will pay for semi-private room, except in the case of infectious or contagious disease. in which case a maximum of Five ($5.00) Dollars per day will be paid. (As adopted March 22, 1937)"

Section 3 of Article X was amended, on April 6, 1937, to read as follows:

"Section 3. The members shall pay for the following items:

(1) Medicines, drugs, surgical appliances such as orthopedic devices and crutches; eye glasses, artificial limbs or eyes and hearing devices;

(2) Radium and deep X-ray treatments;

(3) Dental work;

(4) Oxygen tanks or tents and materials;

(5) Blood transfusions;

(6) Special nursing service if not ordered by the Medical Director;

(7) Treatment, services, supplies and other items prescribed or ordered by an 'outside doctor' including his fees.

(8) Treatment of venereal diseases at the rate of Fifty Cents ($0.50) per treatment.

(9) Hospitalization is excess of that mentioned above.

The corporation shall make an effort to secure at reduced rates all the medical services and items for which the member is required to pay."

Section 3 of Article X was amended, on May 2, 1938, to read as follows:

"Section 3. Any contract entered into by the corporation on behalf of its members will require the members to pay for the following:

(1) Medicines, drugs, surgical appliances, such as orthopedic devices and crutches; eye glasses; artificial limbs or eyes; and hearing devices;

(2) Radium and deep X-ray treatments;

(3) Dental work;

(4) Oxygen tanks or tents and materials;

(5) Blood transfusions;

(6) Special nursing service if not ordered by the Medical Director;

(7) Treatment, services, supplies and other items prescribed or ordered by a physician not in a contractural relationship with the corporation and its member, but employed by an individual member, including fees of such physician.

(8) Treatment of venereal diseases at the rate of Fifty Cents (50¢) per treatment.

(9) Hospitalization in excess of that mentioned in Section 1 of this article.

The corporation shall make an effort to secure at reduced rates all the medical services and items for which the member is required to pay."

Section 3 of Article X was amended, on September 19, 1938, to read as follows:

"Section 3. Any contract entered into by the Association in behalf of its members will require the members to pay for the following:

(1) Medicine, drugs, surgical appliances, such as orthopedic devices and crutches; eye glasses; artificial limbs or eyes; and hearing devices;

(2) Radium and deep X-ray treatments;

(3) Dental work and dental X-rays;

(4) Oxygen tanks or tents and materials;

(5) Blood transfusions;

(6) Special nursing service if not ordered by the Medical Director;

(7) Treatment, services, supplies and other items prescribed or ordered by a physician not in a contractual relationship with the Association and its members, but employed by an individual member, including fees of such physicians.

(8) Hospitalization in excess of that mentioned in Section 1 of this article, provided, however, that in confinement cases the member shall in every case bear the first $25 of hospitalization expense.

(9) For each house call the member shall reimburse the association for travel expense of the physician in an amount not exceeding $1.00; provided that no charge shall be made for travel expense for additional house calls after the first, made at the instance of the attending physician.

Section 4. No member of this corporation or any of his or her dependents shall request the corporation doctor to call at his or her residence if such person is able to call at the doctor's office. Doctors will answer necessary house calls within a radius of ten miles from the District line. Members will, upon request of the corporation doctor, furnish such doctor with any information he may request relative to their eligibility to benefits from the corporation and should, at all times, have available their card for identification. (As adopted March 22, 1937)"

Section 4 of Article X was amended, on April 6, 1937, to read as follows:

"Section 4. The corporation will not assume responsibility for furnishing unlimited medical service to members but will do so only to the extent of its resources and to the extent which, in each case, is considered desirable and necessary by the Medical Director."

Section 4 of Article X was amended, on May 25, 1937, to read as follows:

"Section 4. The corporation will not assume responsibility for furnishing unlimited medical service to members but will do so only to the extent of its resources."

Section 4 of Article X was amended, on October 4, 1937, to read as follows:

"Article X, Section 4. The corporation does not provide insurance for its members but only undertakes to provide medical and hospitalization service for them as herein stated, and in any event will furnish such service only to the extent of its resources."

Section 4 of Article X was amended, on October 25, 1937, to read as follows:

"Article X, Section 4. The corporation does not provide insurance for its members but only undertakes to provide medical and hospitalization service for them as herein stated, and in any event will furnish such service only to the extent of its resources."

Section 4 of Article X was amended, on May 2, 1938, to read as follows:

"Section 4 (a). The corporation does not guarantee that it will provide any or all of the services above specified and for which it will attempt to contract on behalf of its members and it shall not be liable to any member or his dependent in any manner whatever if it should for any reason, including lack of funds, be unable to procure any or all of said services when called upon to do so.

(b). The corporation does not guarantee that any physician or physicians with whom it may enter into a contract to render services to its members will perform such contract and its only obligation in the event of the breach of such contract by any physician shall be to use its best effort to procure the needed services from another source.

(c) The corporation shall not be liable to its members or their dependents for any act of omission or commission on the part of physicians or other persons with whom it may contract for the rendition of services to its members and their dependents."

Section 4 of Article X was amended, on September 19, 1938, to read as follows:

"Section 4 (a). The Association does not guarantee that it will provide any or all of the services above specified and for which it will attempt to contract on behalf of its mem-

bers and it shall not be liable to any member or his dependent in any manner whatever if it should for any reason, including lack of funds, be unable to procure any or all of said services when called upon to do so.

(b) The Association does not guarantee that any physician or physicians with whom it may enter into a contract to render services will perform or properly perform such contract, and its only obligation in the event of the breach of such contract by any physician shall be to use its best effort to procure the needed services from another source.

(c) The Association shall not be liable to its members or their dependents for any act of omission or commission on the part of physicians or other persons with whom it may contract for the rendition of services to its members and their dependents.

Section 5. Any member of the corporation who incurs hospital expense on account of himself or a dependent previously listed with the corporation, as a result of sickness or accident while absent from the territory served by the corporation, shall be reimbursed, upon certification of the physician in attendance, all or any part of such expense, but no amount will be paid in any case in excess of what would have been paid had the service occurred in the territory served by the corporation. Whenever any sickness or injury shall be caused to the member, or his dependent, by the tort of a third person and that person should pay for the medical or other expenses growing out of said injury, this corporation shall be subrogated to and be entitled to reimbursement for the medical or other services furnished and for which said member has collected from said third person. (As adopted March 22, 1937)"

Section 5 of Article X was amended, on April 6, 1937, to read as follows:

"Section 5. The Trustees shall have the right to determine and modify the extent of the service to be furnished to members at any time they may decide to do so upon written notice to the members to that effect given fifteen (15) days prior to any such change."

Section 5 of Article X was amended, on September 19, 1938, to read as follows:

"Section 5. The Trustees shall have the right to determine and modify the extent of the service to be furnished to members at any time they may decide to do so upon written notice to the members to that effect given fifteen (15) days prior to any such change."

Article X, on April 6, 1937, was amended to include the following:

"Section 6. To be able to avail themselves of medical and surgical service, the members or dependents must be located in, or within ten miles of the District of Columbia line, or must come to, the City of Washington, D. C."

Section 6 of Article X was amended, on May 25, 1937, to read as follows:

"Section 6. To be able to avail themselves of medical and surgical service, the members or dependents must be located in, or within ten miles of the District of Columbia line, or must come to, the City of Washington, D. C., except that the Medical Director may provide for house calls not exceeding twenty miles."

By amendment on October 25, 1937, Section 6 of Article X was deleted.

Article X, on April 6, 1937, was amended to include the following:

"Section 7. Any person referred to herein as a dependent, to be eligible to the benefits of the corporation, must be totally dependent upon the member of the corporation for a livelihood at the time of such person's disability and before need of medical service. However, under this provision persons who are regularly working and receiving compensation for their services are not dependent, with the exception of wife or husband, or school children who work during the summer months only, may be considered dependent. Any member who accepts medical attention from the corporation doctor, or who has medical services performed for any person who he claims is dependent upon him and who is found not to be entitled to such medical service, shall reimburse the corporation for any payment the corporation may have made on his account; and, further, shall pay the corporation for the services of the doctor who attended the case, or the corporation may cause the same

to be deducted from the wages due such employee as provided in Section 1 of Article VI of these by-laws."

Section 7 of Article X was amended, on May 25, 1937, to read as follows:

"Section 7. Any person referred to herein as a dependent, to be eligible to the benefits of the corporation, must be totally dependent upon the member of the corporation for a livelihood at the time of such person's disability and before need of medical service. However, under this provision persons who are regularly working and receiving compensation for their services are not dependent, with the exception of wife or husband, or school children who work during the summer months only, may be considered dependent. Any member who accepts medical attention from the corporation doctor, to which he is not entitled, or who has medical services performed for any person not entitled thereto shall reimburse the corporation for any payment the corporation may have made on his account, and, further, shall pay the corporation for the services of the doctor who attended the case, or the corporation may cause the same to be deducted from the wages due such employee."

Section 7 of Article X was amended, on October 25, 1937, to read as follows:

"Article X, Section 7. Any person referred to herein as a dependent, to be eligible to the benefits of the corporation, must be totally dependent upon the member of the corporation for a livelihood at the time of such person's disability and before need of medical service. However, under this provision persons who are regularly working and receiving compensation for their services are not dependent, with the exception that wife or husband, or school children who work during the summer months only, may be considered dependent. Any member who accepts medical attention from the corporation doctor, to which he is not entitled, or who has medical services performed for any person not entitled thereto, shall reimburse the corporation for the cost, or, at the option of the corporation, the reasonable value, of any services rendered by the corporation on his account, and, further, shall pay the corporation for the services of the doctor who attended the case, or the corporation may cause the same to be deducted from the wages due such employee.

(This section becomes Section 6 by amendment of October 25, 1937.)"

Section 6 of Article X was amended, on May 2, 1938, to read as follows:

"Section 6. Any person referred to herein as a dependent, to be eligible to the benefits of the corporation, must be totally dependent upon a member of the corporation for a livelihood prior to and at the time of such person's disability and prior to and at the time of need of medical service. Under this provision persons who are regularly working and receiving compensation for their services are not dependent, with the exception that wife or husband, or school children who work during the summer months only, may be considered dependent. Any member who accepts benefits hereunder to which he is not entitled, or who secures such benefits for any person not entitled thereto, shall pay a penalty commensurate with the value of the services so received as may be determined by the Board of Trustees."

Article X, on April 6, 1937, was amended to include the following:

"Section 8. No member of this corporation or any of his or her dependents shall request the corporation doctor to call at his or her residence if such person is able to call at the doctor's office. Doctors will answer necessary house calls within a radius of ten miles from the District of Columbia line. Members will, upon request of the corporation doctor, furnish such doctor with any information he may request relative to their condition and eligibility to benefits from the corporation and should, at all times, have available their associate or membership card for identification."

Section 8 of Article X was amended, on May 25, 1937, to read as follows:

"Section 8. Members or dependents in order to avail themselves of medical and surgical service shall come to the doctor's office if such is possible from the nature of their illness. Doctors will answer necessary house calls within a radius of ten miles from the District of Columbia line, except that the Medical Director may provide for house

calls not exceeding twenty miles. Members will, upon request of the corporation doctor, furnish such doctor with any information he may request relative to their condition and eligibility to benefits from the corporation and should, at all times, have available their associate or membership card for identification."

Section 8 of Article X was amended, on October 25, 1937, to read as follows:

"Article X, Section 8. Members or dependents in order to avail themselves of medical and surgical service shall come to the doctor's office if such is possible from the nature of their illness. Doctors will answer necessary house calls within a radius of ten miles from the District of Columbia line, except that the Medical Director may provide for house calls not exceeding twenty miles. Members will, upon request of the corporation doctor, furnish such doctor with any information he may request relative to their condition and eligibility to benefits from the corporation and should, at all times, have available their associate or membership card for identification.

(This section becomes Section 7 by amendment of October 25, 1937.)"

Section 7 of Article X was repealed on May 2, 1938.

Article X, on April 6, 1937, was amended to include the following:

"Section 9. Any member of the corporation who incurs hospital expense on account of himself or a dependent previously listed with the corporation, as a result of illness falling within the by-laws and rules of the corporation, or accident while absent from the territory served by the corporation, shall be reimbursed, upon satisfactory certification or evidence thereof by the attending physician approved by the Medical Director of this corporation, all or any part of such expense, but no amount will be paid in any excess of what would have been paid had the illness or accident occurred in the territory served by the corporation. Whenever any illness or injury shall be caused to the member or his dependent by the tort of a third person and that person should pay for the medical or other expense growing out of said injury, this corporation shall be subrogated to and be entitled to reimbursement for the medical or other

services furnished by it and for which said member has collected from said third person."

Section 9 of Article X was amended, on May 25, 1937, to read as follows:

"Section 9. Any member of the corporation while temporarily absent from the territory served by the corporation, who incurs hospital expense on account of himself or a dependent previously listed with the corporation, as a result of illness or accident falling within the by-laws and rules of the corporation, shall be reimbursed, upon satisfactory certification or evidence thereof by the attending physician approved by the Medical Director of this corporation, all or any part of such expense, but no amount will be paid in any case in excess of what would have been paid had the illness or accident occurred in the territory served by the corporation. Whenever any illness or injury shall be caused to the member or his dependent by the tort of a third person and that person should pay for the medical or other expense growing out of said injury, this corporation shall be subrogated to and be entitled to reimbursement for the medical or other services furnished by it for which said member has collected from said third person."

Section 9 of Article X was deleted by amendment of October 25, 1937.

Thereupon the defendants read to the jury from the minutes of the executive meeting of October 25, 1937, of the Medical Society (Gov. Ex. 37) as follows:

(Excerpt)

"Dr. Thomas E. Neill presented a complete discussion of present problems and modes for correction as written by Dr. John H. Trinder. The secretary was instructed to read this in detail."

The defendants then proposed to read said statement of Dr. John H. Trinder. The statement of Dr. Trinder referred to and contained in said minutes was then objected to by the Government as a self-serving, argumentative discourse in favor of the defendants' theories, coming from a third party, and that the defendants did not request this portion of the minutes to be read by the Government. The

defendants contended that the statement was presented to the Society by the defendant Dr. Neill, was read as a full discussion of the problems discussed at the meeting, and pointed out that portions of the minutes of this particular meeting had already been read in evidence by the Government as relevant to the conspiracy charged, and that the entire minutes of the meeting were admissible to show the entire proceedings of that evening.

The defendants offered to prove the contents of the John Trinder statement appearing as a part of the minutes of October 25, 1937, reading as follows:

"Statement Prepared by Dr. John H. Trinder

"The medical profession of the District of Columbia is now confronted by an impending inroad upon its status as a very necessary part of the social economy, which will not only be disastrous to its members individually and collectively, but will affect the medical profession of the country as a whole. It will also react unfavorably upon the public, in that it advents a type of medical service which will eventuate into a commercialization of an art and science which has within the last 30 years alone, extended the space of life 20 years.

"Medical service, and by this general term, I mean also surgery, cannot be weighed out in ounces and pounds, or be measured in inches or yards and wrapped up in a neat package and be taken home or delivered. It has no such tangible property, but is based upon the personal service of a highly trained individual, whose medical degree is backed by a long academic preparatory study and post-graduate clinical application. And as a further evidence of his qualification to practice his art each doctor must pass a licensure board, local or national, which determines his skill, knowledge and fitness to serve the public.

It is not my intention to review the past accomplishments of medicine and its unselfish endeavors in combatting disease and pestilence. But I mention in passing the names of Jenner, through whose efforts and sacrifices, vaccination against smallpox was instituted. In the Middle Ages this disease was the scourge of Europe, and decimated the population. Of Pasteur, whose researches gave us the prevention and cure of dread hydrophobia. Of Walter Reed, whose discovery of the transmission of yellow fever,

stripped this pestilence of its epidemic character, and eventually made possible the building of the Panama Canal. The results of his discovery spurred the research into other host-borne diseases, as malaria; typhus fever, the protozoan infections, tularemia, hook-worm disease and many others. Now the tropics and the semi-tropical countries, have been made healthful places in which to live. Of Russel, Craig and Nichols, through whose efforts anti-typhoid serum was perfected, and the greatest scourge of armies and other expeditions in the field has been eradicated. Others, too numerous to mention have devoted their lives unselfishly to study and research in order to relieve human suffering, and the annals of medicine are filled with the names of many who have actually laid down their lives through infections incurred in their researches.

Were these men inspired by any ulterior commercial motives? Were they units of organizations or bureaus, which have sold their labors to the public in exchange for a mere pittance? Any one with common sense and human intelligence knows that they were inspired by a love of their profession and an unselfish desire to help their fellowmen. There are many such researchers in the field of medicine and surgery today, still struggling to follow their noble example.

The average conscientious doctor is made in the same mold, and while he must make a decent living to maintain his place in the social order, he is at all times ready to give his best for his patients. To give them his individual thought and effort, irrespective of time, weather conditions or personal problems in his own life. Can such a man be regimented in a commercial group, selling his services for an annual competence, knowing that his efforts are resold much as groceries or other commodities, and still retain his personal touch and interest in patients who are likewise regimented, and given a numbered card, for which they pay a mere monthly pittance? If he punches a time clock, will he retain his individuality, and interest, and pride in his profession?

Let us discuss the medical service the beneficiary will get for his monthly prepayment.

1. His selection of a doctor for the attention he needs will be limited to the staff of doctors of the corporation. In the appointment of this staff he will have had no voice.

Thus he will forego what is his inalienable right—the choice of his own physician. In some cases this will at first be of no apparent importance, and if given a thought at all the conclusion will be that one will do as well as another for the particular ailment. This may hold good in the less serious illnesses. But along comes a grave illness, in which the question of invalidism or even the final call may be imminent. Then the physician of their own choice, one who can play the role of friend and counselor, as well as healer, is needed. Will the overworked regimented corporation doctor, who keeps hours from 8 A. M. to 4 P. M., whose clientele is made up of cases, card indexed for filing, who is on a salary, which does not increase as his work piles up, respond in the small hours of the morning when the crisis comes or an emergency arises? If called for such exigency, will he not be inclined to say, "Come to the office at 9 o'clock in the morning"? Will he have the personal interest the family doctor has in his patients? Say that his remuneration be based upon the number of patients he attends. In such a case the fee per person will necessarily be the minimum for which he is willing to sell himself to the corporation, and again, his clients are numbers, stripped of personal interest, and he becomes like the craftsman doing piecework. Do you wish the most valuable thing you have, your health, to be bartered for in such a cold blooded commercial manner?

2. Detailed facts of the most intimate character, past and present, are necessarily acquired by the physician in his role of administering to the ills, mental and physical, of his patients. Such information is adjudged by law to be privileged communications, and to be held as inviolate as those of the confessional of the Catholic Church. The physician is even more closely bound in secrecy than the priest. The information he obtains is as a rule stripped of the emotionalism of the confessional; and much of it obtained by deduction and analogy, of which fact the patient is usually fully aware. This most confidential status of the followers of the healing art was recognized by Hippocrates, one of the founders of medicine, dating back to the early Grecian period. This wise physician and teacher had the foresight to bind his pupils by an oath, one of the provisions of which oath relates to this sacred niche in which the physician is placed by reason of his knowledge of the most inti-

mate details of his patients. And to this day before he is awarded his diploma, the physician must swear that he will never reveal any of the secrets given him to lock up.

Now will the histories of beneficiaries of a prepaid health bureau, histories often containing details which are for only the physician to see, be treated in the same inviolable manner? Will they not be classed as public or semipublic records, open to many whose only interest is one of morbid curiosity?

This is the greatest argument for the insistence of every individual to exercise his right in choosing his own physician. When he subscribes to any prepayment plan offered by a corporation illegally practicing medicine, he forfeits that sacred privilege. Does the cleverly worded prospectus and propagandum put out to ensnare its victims give these and other facts relative to the kind of service such corporate setup can only give? No. It is not even hinted between the lines. Read carefully what the prospects offer. Has not the proposed health insurance clinic of the Home Owners' Loan Corporation, a Bureau of the Government, a semiofficial status? If so, will its records not also be open to others than its hired doctors? In passing, does the above corporation practice the same sort of philanthropy toward those who are legally entitled to assistance in building new homes for themselves, or renovating old ones? If you look into the matter you will find that its policies are laid down according to the strictest interpretation of real estate law and procedure. Its subscribers are bound by just as legally tight mortgages as any accomplished by lay financial and realty companies. The daily papers cited instances in which these mortgages are foreclosed, when the holders encounter further financial difficulties.

Will not the same policy be followed in the cases of its health beneficiaries, who default in their prepayments? Of course, as it is a cold business proposition, lacking in its very conception the attributes upon which the practice of medicine is founded.

3. Let us say that the contract doctor makes an error in diagnosis, or judgment, gives an overdose of a potent drug, or makes a mistake in operating, and the patient is invalided for life, or some more serious consequence ensues. To whom can the patient or relatives look for redress? Certainly not the doctor, for the unfortunate patient did

not employ him. He had no choice but what was furnished by the corporation, and the injured party must look to the said corporate body for redress. Experience has shown that the chances of obtaining justice or consideration from such a setup are very slim. Taken to court the said corporation has the money to employ competent lawyers, funds which you and your associates have contributed.

4. In epidemics, which are likely to come at any time, can the overworked members of the contract staff adequately meet the demands made upon them? You reply that you may then turn to the other doctors in the community. You, you can now, but let this vicious system of panelized medicine, get its strangle hold upon its victims, and there will be no longer the incentive for good men to dedicate their lives to the healing art, and those few who are rash enough to study medicine will be so demoralized at the prospects of making a decent living, that they will either seek a contract with the monster corporation or turn to other fields. Such a system can only result in a lowering of the standards of medicine as we know it today. In fact, the family doctor, and the well-trained specialist of today, will fade out of the picture.

Now a word to the effect of this system of socialized, commercialized, communistic brand of medicine upon the other professions and business in general. After the medical profession has been properly panelized and throttled, will not the octopus look around for other victims? There are the dentists and lawyers to be subsidized. The retailers of the necessities of life, as food, clothing, housing, even entertainment and recreational enterprises can likewise be sovietized. The automobile industry can be brought within the confines of the system, and also the railroads. In fact, most every human enterprise can be made to bow to the will of the corporate monster. Why not go the whole way and set up another soviet? But take counsel and see where you will be, a mere stockholder, paying your pittance to maintain a small minority, the directors of the corporation in opulence and security, their tables overflowing with milk and honey, and you eating of the crumbs.

What have the doctors themselves done to meet the effects of the depression on those in the lower bracket incomes? This can best be discussed by citing what the local profes-

sion, as represented by the District of Columbia Medical Society, has initiated.

1. In conjunction with a number of public-minded laymen, the Group Hospitalization idea was crystallized into concrete working form, and is now successfully functioning in furnishing 21 days' hospitalization a year to its beneficiaries for the nominal prepayments of 75 cents a month. This move was inaugurated about 3 years ago, and is now functioning as an integral part of the Social Welfare of the community. It operates under a competent manager with an adequate office force, under the supervision of a Board of Governors consisting of public-minded laymen and members of the local medical profession. The Board serves without remuneration.

2. The Medical-Dental Service Bureau is an organization to which persons in the lower bracket incomes can apply when in need of medical services. It has a staff of economic experts, who look into the budgets of the applicants and after ascertaining in a general way their medical needs, refer them to practicing physicians with a brief statement of their status, with a recommendation that the fees for services be graded in such manner that no burden will be imposed upon the budget of the applicant. The doctors are heartily cooperating with the Bureau. This organization was initiated by and primarily financed by the Medical Society of the District.

3. The Central Admitting Bureau is likewise an organization started and initially financed by the Medical Society. Its function is to go into the financial condition of the indigent and semi-indigent, who are mostly referred by the hospital dispensaries and the doctors themselves. It has a tie in with the Community Chest, in that after it has determined that the individual applicant is worthy of and entitled to the assistance of the Chest Fund, he is referred to a hospital with a written statement citing his ability to make part payment or in many cases nothing at all, and his account is underwritten by the Bureau, to be paid out of the Chest Fund.

Both of the latter two Bureaus are managed by competent executives, and economic experts, under the supervision of Boards made up of physicians appointed by the Medical Society. The latter bodies serve without remuneration.

Now for the services which physicians themselves have rendered individually, and are now constantly giving to the indigent without stint or hope of reward. Every hospital in the District and for that matter, throughout the country, is staffed by a corps of doctors, carefully selected according to ability and ethical standing, who give of their time in the dispensaries, laboratories and the operating rooms without pay. These services are given unselfishly and willingly as their contribution to the community welfare. To give a better idea of such a contribution, it has been estimated that in the D. C., alone it amounts in dollars and cents to around $3,000,000.00 per annum, greater than the gifts of the general public to the Community Chest. What other class, professional or commercial, makes such a free-will offering to suffering humanity.

Many physicians have patients in their private practices, persons who have been at one time in the higher bracket incomes, who have through no fault of their own, become without means to meet their obligations, who are given the best the doctors have, the latter knowing that hope of remuneration is very doubtful. It is true that in many cases, when such patients have recovered in whole or in part, their former financial positions, they often show their appreciation by recognizing their obligation by payment in part or in whole for the services rendered in their time of need.

Do the retailers of the neecssities of life, as food, clothing, housing, etc., thus give of their merchandise, their services and their rentals in proportion to their customers ability to pay, or without cost to the indigent? The doctor's stock-in-trade is his knowledge, skill and time.

Thus is presented the results, to the public, of the establishment of socialized medicine, from the standpoint of the physician. It is not a defense to the threat of undermining his income, and can in no way be attacked on that premise. The medical profession is an integral part of the social economy, and anything which jeopardizes its position, will react unfavorably on the public welfare.

One of the greatest tributes of the medical profession to public health has been the development of preventive medicine in its study of the propagation of disease; and means of prevention. Volumes could be written upon this phase of its activities and it has been briefly stated elsewhere in this article.

Is it not just as much its duty to warn against this threat to the public welfare? Will not the gradual encroachment, ending in the final establishment of such panelized socialistic system of dealing out medical service, by means of a commercialized yardstick, be more destructive in its finality than the epidemics of the past, which have decimated the human race?

As stated before, is it not the entering wedge of a system which will engulf all human endeavors, stripping them entirely of the personal element so precious in the relationship of man to man, and regimenting the masses for the benefit of a political minority? I say political because politics is bound to play the major role."

The Government's objection was sustained, defendant's offer refused, and an exception was allowed.

DR. PRENTISS WILLSON, a Witness for the Defendants.

Direct examination.

By Mr. John E. Laskey:

I am a physician. I am 59. I graduated in 1905. After graduation I engaged in the general practice of medicine in the District of Columbia. I graduated from Georgetown University. I was in the service in the Army during the last war, and in 1919 when I left the service I specialized in obstetrics and gynecology and have done nothing but that since. I am attending surgeon or obstetrician in the Columbia Hospital for Women, which position I have held for ten or eleven years.

I am a member of the District Medical Society and the AMA. I joined the District Society in 1908 and became much interested in its affairs shortly after that time. I served in many different capacities in various offices in the Society: as corresponding secretary, as chairman of the Committee of Censors, several terms on the Executive Committee, some of them ex officio because of other committee chairmanships which I held at the time, some of them through election for a term of three years each; I was chairman of the Executive Committee several times, chairman for a term of the Committee on Medical Economics, and in 1933 I was elected president of the Society for the

fiscal year 1933-1934. The fiscal year of the Society runs from the first of July to the following June 30th. I was also a member of the board of the Health Security Administration and the Medical-Dental Service Bureau, which were eleemosynary institutions which the Medical Society had part in forming.

The Society meets regularly every Wednesday night. The first Wednesday night in each month is a business meeting, and of these meetings four, that is, the meetings in November, January, March, and May—are so-called stated meetings, at which certain formal business of the Society is transacted and at which, according to the constitution, amendments to the constitution must be brought in. Only at those stated meetings can amendments be proposed.

In the matter of changes to the constitution and by-laws, if a member wishes to attempt to have a constitutional change made or propose an amendment to the constitution, he must propose it at a certain stated meeting, and then that proposed amendment is referred to the Executive Committee, which is obliged to make a report concerning it to the next ensuing stated meeting of the Society, either recommending its adoption or recommending adversely to its adoption.

I think I can give you very accurately the history of the amendment to the constitution denominated Chapter 9, Article 4, Section 5. The purpose of the amendment was to afford the Society better facilities for controlling the practice of its members in relation to the Workmen's Compensation law, and it was first proposed before the Medical Society at the stated meeting in November, which would be the first meeting in November, 1935. At that time the provision in the constitution read:

(Mr. Laskey read to the jury as follows:)

"No member of the Society shall engage in any professional capacity whatsoever with any organization, group, or individual engaged in the practice of medicine unless the Society has received proof that the profits from the practice inure to the benefit of members of the Medical Society."

The amendment now reads as follows:

(Mr. Laskey read to the jury as follows:)

"No member of the Society shall engage in any professional capacity whatsoever with any organization, group, or

individual, by whatever name called or however organized, engaged in the practice of medicine within the District of Columbia or within ten miles thereof, which has not been approved by the Society. The Executive Committee is authorized and directed to prepare an approved list of organizations, groups, and individuals, by whatever name called and however organized, engaged in the practice of medicine within the District of Columbia or within ten miles thereof, and the same shall be kept in the office of the secretary-treasurer. Before any such organization, group, or individual can be placed on the approved list of the Society, such organization, group, or individual, or the member of the Society proposing professional relations therewith shall submit to the Compensation, Contract and Industrial Medicine Committee such evidence as the Committee or the Society may require concerning the character, activities, financial condition and ethical standards of said organization, group, or individual, and after considering the same said committee shall make a report of the investigation and findings to the Executive Committee for such action as it may deem necessary."

In its original form the amendment was proposed on the first Wednesday in November, 1935. It was then referred to the Executive Committee for report at the next stated meeting, in January. At that time I was a member of the Executive Committee to which this proposed amendment was referred. The amendment was given consideration in the Executive Committee and was vigorously opposed, so far as its adoption in the constitution was concerned, by a group of that committee, of which I was one, and the Executive Committee reported it to the Society at the stated meeting on the first Wednesday in January, 1936, adversely.

Despite the adverse recommendation of the Executive Committee the Society adopted it, so that it became a part of the constitution in January, 1936, for the first time. Its proponents then realized that there was not proper machinery in the constitution to effect the purposes of the amendment, and at the stated meeting of the Society in March, 1936, two months later, another amendment was proposed for the purpose of putting into the amendment machinery to make effective the provisions of the amendment already adopted. At the stated meeting in March an ex-president of the Society, Dr. A. B. Bennett, proposed a

further amendment to the constitution, to strike out Chapter 9, Article 4, Section 5, and these two proposed amendments to the constitution were referred to the Executive Committee.

The Executive Committee met, and I still being a member of it, and the two amendments were referred to a subcommittee of three to prepare a report for the consideration of the Executive Committee to submit to the Society. That committee was composed of Dr. Bennett, Dr. Don Johnson, and myself. The subcommittee met and gave careful consideration to the two amendments, the one striking out and the enabling amendment to provide machinery to make the existing amendment operative, and prepared a formal statement of its reasons for the position it recommended to the Executive Committee, that the amendment to strike out Chapter 9, Article 4, Section 5, be adopted, and that the proposed amendment to provide machinery to make the present amendment operative be not adopted.

The report of the subcommittee was adopted by the Executive Committee, with a further amendment which was offered in the full committee, to the effect that the whole matter be referred to a special committee of the Society for study during the coming summer. That special committee was to consist of the president, the chairman of the Executive Committee, the chairman of the Compensation, Contract and Industrial Medicine Committee, the counsellor of the Society, Colonel Frederick A. Fenning, and two attorneys who were practicing at the local bar.

Following the usual constitutional procedure, this recommendation of the Executive Committee was brought into a full meeting of the Society in the latter part of May, 1936, as the stated meeting was postponed because the Society was having an annual scientific session. The Society overruled the recommendation of the Executive Committee and refused to strike out Chapter 9, Article 4, Section 5, and adopted the new proposed amendment which was to provide machinery for its operation, and then adopted the suggestion of the Executive Committee that the whole matter be referred to a committee for study during the summer, for a report to the Society in the fall.

After the July, 1936, change of office the committee was organized, consisting of Dr. William Sprigg, ex officio, as president of the Society, Dr. J. Lawn Thompson, ex officio, as chairman of the Executive Committee, Dr. R. Arthur

Hooe, ex officio, as chairman of the C. C. and I. M. Committee, Colonel Frederick A. Fenning as counsellor of the Society, and, under the provision of the action of the Society, Winship Wheatley and John Spaulding Flannery of the local bar. This was in 1936.

The subject of study for the committee was the relations of the Society to its members engaged in contract practice under the Workmen's Compensation law, and the best method of controlling that practice to make it conform to the ethics of the local organization and the AMA. The committee studied the matter during the summer.

Because of a serious difference of opinion in the Society and in the Executive Committee surrounding this matter, I resigned from the Executive Committee and from every other position and office I held with the Society at the meeting of April 22, 1936, although my resignation did not take effect until the first of the following May. I attended one meeting of the Executive Committee after that resignation. Therefore, I had nothing to do with the deliberations of this committee or with its activities or with the activities of the Executive Committee.

The Committee gave the matter consideration during the summer, and at a meeting of the Society in October, 1936, merely made a progress report and asked for more time to give the matter further consideration. The request was granted by the Society, and in November 1936 the committee made its final report to the Society, in which it suggested certain minor modifications in Chapter 9, Article 4, Section 5, which then had been in the constitution since the preceding January. The report of the committee was received and given the status of the first reading of a proposed amendment, because it did make certain minor changes in wording. At a stated meeting in January 1937 the matter then came up, with some further modifications in the wording of the amendment, and the action of the Society was to return it to the committee, with instructions to consult legal counsel further. The matter finally came up before the Medical Society at the first stated meeting in March, 1937, and it was then adopted.

Except for the changes made in March, 1937, the provision had been in the constitution for 14 months, and the amendment, so far as I know, has never been touched since then. I was opposed to the original amendment. I fought it in the Executive Committee. I signed every adverse report

concerning it, and I was in favor of its being stricken out of the constitution. On three different occasions I proposed amendments to strike it out of the constitution, and I voted for approval of them, and I continued to oppose the amendment until its final adoption in 1937.

I first heard of Group Health on the occasion of the meeting in Dr. William Gerry Morgan's office, May 16, 1937. The introduction of the amendment and the final passage of it in its present form, of Chapter 9, Article 4, Section 5, obviously did not have anything to do with Group Health because it was in the constitution 14 months before March, 1937, and I never heard of Group Health until May, 1937, so it was in the constitution 18 months before I ever heard of Group Health.

I recall the letter introduced by Dr. Sprigg to be sent to the hospitals in the fall of 1937 very well. Dr. Sprigg proposed sending that letter at a meeting of the Society in October, 1937, but Dr. Groover pointed out that it was too important a matter for the Society to take action on prior to all the members of the Society having been notified that the matter was coming up, and this placed the letter which Dr. Sprigg proposed sending to the various local hospitals as a matter on the agenda and definitely postponed it for consideration until the stated meeting on the first Wednesday in November following. I attended that meeting, which occurred on November 3, 1937.

The letter that Dr. Sprigg proposed sending the hospitals was read as follows:

"The Medical Society of the District of Columbia desires to call attention to Chapter 9, Article 4, Section 5 of the constitution, as follows"—

Then follows in the letter the same Section 5 which Mr. Laskey just read to the jury. Then follows this (reading further):

"Whereas the Medical Society is using its earnest efforts to give to the people of the District of Columbia the most advanced and best possible medical care, we therefore ask your cooperation by aiding us to carry out this principle. In view of the above section of the constitution of the Medical Society of the District of Columbia we hope your board will see the advisability of making such reservations in your hospital so that it may be in accord with and support our efforts.

"Members shall not accept appointment to or continue to serve upon the medical staff of any hospital or dispensary which is not approved by the Society. A list of approved hospitals and dispensaries shall be available in the Society's office."

The Sprigg letter was on the agenda for action at the November 3 meeting; on the afternoon of November 3 I noticed the letter on the agenda, proposing to call to the attention of the boards of directors of the hospitals the provisions of Chapter 9, Article 4, Section 5, which I was opposed to. I then tried to think of a possible way to prevent the sending of the letter, and on a piece of scratch paper with a pencil, without consulting with anybody in the world, and on the spur of the moment, I scratched down the resolution which I proposed that night, and which shows on its face how very crudely and carelessly it was drawn. I may have shown the draft to Dr. Hough, but I honestly don't remember doing that. I then had my secretary type the resolution. I then walked over to Dr. Christie's office, as I knew he was opposed to the sending of the Sprigg letter, and on seeing him in his office he said he was opposed to it. I then called his attention to the resolution I had drafted and asked him if he was willing to second it and if he thought that the resolution as drawn might prevent the sending of the Sprigg letter. He said he thought it might and he would be willing to second it. At the meeting of the Medical Society that night (November 3) there was a further recommendation, among much other business, brought in from the Executive Committee, which seemed to me to be proposing action along the same line as the Sprigg letter, and I asked if such proposal was in lieu of the Sprigg letter, but the question was not answered, so I immediately proposed my resolution. Prior to proposing my resolution, however, a resolution was introduced by Dr. Stanton, but it had nothing to do with this particular matter. The resolution I proposed read as follows:

"Whereas, the Medical Society of the District of Columbia has an apparent means of hindering the successful operation of Group Health Association, Inc., if it can prevent patients and physicians in its employ from being received in the local private hospitals;

Whereas, the Medical Society of the District of Columbia has no direct control over the policies of such hospitals as

are determined by their lay boards of directors, except through control of its own members serving on their medical staffs; and

Whereas, conflicts between the Medical Society of the District of Columbia and any local hospital arising from an attempt to enforce the provisions of Chapter 9, Article 4, Section 5 of the constitution should be assiduously avoided if possible because of the unfavorable publicity which would accrue to its own members;

Therefore, be it resolved, that the Hospital Committee be, and is hereby, directed to give careful study and consideration to all phases of this subject and report back to the society at the earliest practicable date its recommendations as to the best way of bringing this question to the attention of the medical boards of directors of the various local hospitals in such manner as to obtain the maximum amount of practical accomplishment with the minimum amount of friction and conflict."

I had one purpose solely in introducing that resolution, and that was to prevent, if possible, the sending of Dr. Sprigg's letter to the boards of directors of the hospitals. There was considerable discussion of the resolution, and I had deliberately chosen the wording spontaneously, on the spur of the moment, because of the wide divergence of view within the Society as to this whole situation. My own personal feeling was that this method of approach to the hospitals in connection with Group Health was inexpedient and calculated to engender friction rather than be of any real assistance in the problem, and the wording of the resolution was deliberately employed, as far as its "Whereas's" were concerned, for the sole purpose of getting enough votes to send it through the Society. The necessity for some such parliamentary tactics is shown by the fact that the vote was quite close, 68 to 53 in favor of the resolution. The sole provision of the resolution which I wished to get over was merely to get the thing into a committee, with the thought in my mind that was the way possibly to choke the thing off and prevent it from being sent to the hospitals. It had that effect to this extent, that the Hospital Committee took the resolution under advisement in conformity with the action of the Society, and at a meeting on November 11 reported to the Society. Whereupon there was considerable discussion and it was re-referred to the committee, with instruc-

tions to consider it further. At the next business meeting of the Society, on December 1, the committee finally reported to the effect that the medical boards of the hospitals should call to the attention of the boards of directors the Mundt Resolution, and the report of the Hospital Committee on December 1 was adopted, which read as follows:

"That as a matter of educational policy the Medical Society of the District of Columbia strongly recommends that all hospitals engaged in the teaching and training of residents, interns, and nurses, where possible, follow the recommendation of the American Medical Association regarding the constitution of their entire medical staffs, namely, that each appointee be a member of the Medical Society of the District of Columbia or a local Medical Society in this immediate neighborhood and a member of the American Medical Association."

There was no further action concerning my resolution that I recall, and the only other action with which I had any personal connection was the final action of the Hospital Committee insofar as it concerned my connection with Columbia Hospital.

I recall a local physician named Scandiffio, and that his name came before the Executive Committee concerning certain charges that had been made, but I had nothing to do with those charges as I had resigned from the Executive Committee and just retained my membership. I knew that he had been tried by the Executive Committee and it had been recommended that he be expelled, and that the matter came up at a Society meeting. Dr. Scandiffio was charged with having violated Chapter IX, Article IV, Section 5, and also two or three other violations of the provisions of the constitution, which charged in substance a violation of the Medical Ethics of the AMA, and that he had contracted to give his services under circumstances wherein he could not render good medical service; further there was a requirement that a physician file his contract with the Society, and Dr. Scandiffio had failed to do this, as required by the constitution. I voted for his expulsion reluctantly, because I felt it was incumbent on the Society to protect itself, and as its members had voluntarily agreed and obligated themselves to obey the provisions of the constitution —while I didn't like certain provisions—he had violated several provisions of that constitution, as far as I could de-

termine from the report of the committee. While I didn't know Dr. Scandiffio very well he was a pupil of mine at Georgetown and had been, as far as my knowledge went, well trained and was personally associated with a very intimate friend of mine, a leading pediatrician, and at the time this whole business was boiling in the Medical Society I had from the very beginning many patients in private practice who were members of Group Health. On several occasions during that period patients of mine stated that they would like to have Dr. Scandiffio see their babies, and I told them as far as I was concerned he was competent and I had no objection to him seeing their babies if he wished and, as a matter of fact, he did see the babies of several patients of mine. That was the close of my contact with the Scandiffio incident. In 1937 and 1938 I was one of eight attending surgeons of Columbia Hospital, four of whom had a surgical service and four of whom were attending obstetricians; I was one of the latter and a member of the medical board of the hospital. Columbia Hospital also had a courtesy staff classified into three categories. Class I concerns operative procedure in gynecology and includes everything connected with surgery on the organs peculiar to women; Class II concerns major obstetrics, involving such things as craniotomy, for instance, or the destruction of an unborn baby, the removal of a uterus; in other words, anything pertaining to the care of a woman in labor. Class III concerns the handling of women in labor as long as it is progressing normally and satisfactorily, but if complications arise a person holding privileges in this class was required to have consultation with a member of the staff of the hospital, free of charge to the patient if the patient was unable to pay for it.

I recall that Dr. Selders applied for courtesy staff privileges at Columbia Hospital, seeking privileges in general surgery, major gynecology, major obstetrics, and normal obstetrics; in other words, he applied for privileges in Classes I, II, and III, and, in addition, tacked on his application the request to do general surgery in the hospital, which meant that he could take out a brain tumor or do a thyroid, or operate for an empyema in the chest, do any surgery. Columbia Hospital doesn't have on its staff any physician corresponding to that sort, and issues no privileges in general surgery. While there are general surgeons who can practice at Columbia, they are on the consulting staff. In other words, we have a consulting staff of general

surgeons, and in the event the patient for whom the hospital is responsible in a ward develops, for instance, empyema from pneumonia following childbirth, we would call in a consultant, because we wouldn't know about such a condition, it not being in our line. Dr. Selders applied for the whole works, I, II, and III, everything, and as far as I know there is no such person existing in the United States. The board, however, gave consideration to the application. As an obstetrician and gynecologist I wouldn't set myself up as competent to determine the ability of a man to do general surgery, as I don't know enough to even gauge his ability from the credentials he might present, and if he referred to a clinic, with the exception of the Mayo Clinic, I probably wouldn't even know enough about the standing of the clinic to which he referred to intelligently pass on the matter, so the application as regards general surgery, despite the fact that we didn't have any such individual on our staff, was referred to the Washington Academy of Surgery for guidance as to what his qualifications were. The question of his ability to do major gynecology, that, modestly, I think I have some ability to gauge. However, that phase of the application was referred to the Washington Gynecological Society for an advisory report, in the same way as we had referred the other application to the Washington Academy of Surgery, as it was our custom to do that even though we felt competent to examine the credentials ourselves. The Washington Academy of Surgery advised adversely as to Dr. Selders' qualifications in general surgery; the Washington Gynecological Society advised adversely as to his qualifications to do major obstetrics and gynecology, which was in accordance with the opinion of the medical board, and since he had applied for all three groups, the medical board, which acts only in an advisory capacity to the Board of Directors, advised the Board of Directors against granting the privileges applied for, and that, I recall, was the action of the board.

Later an application was received from Group Health, rather than Dr. Selders, renewing in a way Dr. Selders' application. This was on September 2, 1938. My impression was that the correspondence on the renewal was handled by some official of Group Health, and the gist of it was that Group Health desired his application should be treated separately for each group of privileges sought. A motion was made before the medical board that Dr. Selders' ap-

plication for privileges I and III, involving major gynecology and minor obstetrics—that is, normal obstetrics, leaving out major obstetrics—be considered. The motion was considered and the medical board recommended adversely; thereupon I moved that the Board of Directors be advised that the medical staff didn't think it advisable to act on the application at that time, and, by a divided vote, that recommendation prevailed and was sent to the directors. The Board of Directors acceded to it and the result was that Dr. Selders was permitted privileges pending final disposition of it, pending which period he was permitted to handle normal obstetrics in the hospital. My position in the matter was this: I said to the medical board that there wasn't any question in my mind that the man is not competent to do general surgery, but that matter is out, and I am equally convinced that he has not shown any evidence that he should be granted the privilege of doing major gynecology or handling desperate cases of childbirth, but were he a member of the Medical Society you would grant him privileges or at least recommend him for privileges in Class III, normal obstetrics, and, in my judgment, this situation should be handled in the same way. Men on Group Health should not be permitted to practice in any hospital if they cannot show that they possess the necessary qualifications, the same as other men in or out of the Society are required to demonstrate. At the very time Dr. Selders' application was before the hospital we turned down a much more competently trained man who was a member of the District Society, and the Board of Directors sent the application back to us under pressure from Members of Congress and various high officials. The medical board stuck to its guns and refused to alter its position, and that concerned a member in good standing in the Medical Society here. My opinion was that if a doctor was qualified, the fact that he was on the staff of Group Health should make no difference, and the board should take a position comparable to the one that Dr. Macatee took at Garfield; that is, such doctor should either be permitted to practice pending the outcome of the question of the legality of Group Health or should be kept out of the hospital altogether. The claim of the members of Group Health concerning illnesses treated in hospitals by a Group Health physician is an outstanding example of the way Group Health—and I am referring to the crowd that had

the thing in control, was going to ride roughshod over the situation in Washington in connection with the hospitals —because there isn't a member of this jury, who if taken ill tonight, could call up a hospital and get in there and be treated by a physician of his choice unless that physician is admitted to courtesy staff privileges in that hospital, but the GHA organization took the position that because an individual was a member of GHA they were different and were entitled to have a privilege for themselves denied to every other citizen in the District of Columbia. The privilege they sought was the right of calling a hospital and saying: "Dr. Blank is my physician and I want to get in there, and he is going to take a tumor out tomorrow," and the hospital should have nothing to say as to whether the doctor was competent to do it or whether the patient was committing hara-kiri. Dr. Selders did attend normal obstetrical cases in the hospital after September of 1938.

I didn't engage in any combination or conspiracy with any person, organization, or society to restrain trade in the District of Columbia in violation of the Sherman Act, as I never contacted anybody in the AMA in this matter in the period covered by the indictment, on that subject or any other, and I have only discussed the matter casually with one or two of my co-defendants, but did nothing more, and I was out of office in the Society, off all responsible committees and any conversation which I had with any of my co-defendants was by way of disagreement. I don't know whether I can name all of the co-defendants in the case, but I would recognize them, as I know them all. I never conspired with anyone for the purpose of restraining Group Health; the members of Group Health, the doctors serving on the medical staff of Group Health, doctors not on the staff of Group Health, or for the purpose of restraining the business of the Washington hospitals.

On receipt of a communication from the secretary of the District Medical Society calling attention to the Mundt Resolution, Dr. Crowley, a member of our staff, moved that the medical board recommend to the Board of Directors that it adopt the policy of the Mundt Resolution. The Board of Directors received the recommendation, returned it to the medical board with the request that the board rescind the recommendation, and the board, on my motion, rescinded its action.

Cross-examination.

By Mr. Lewin:

The final thing I remember on the Mundt Resolution is that I moved that the action of the medical board in recommending its adoption to the Board of Directors be rescinded, as I was not for it, and stated that the effect of it would be to take in people who could pay their medical society dues and keep out those who could not. So far as I know the application of Dr. Selders followed the usual form and gave information as to his birth, education, experience, teaching experience, hospital experience, and his references. In investigating an applicant one of the sources we turn to is his references.

Government counsel read Gov. Ex. 538.

On November 25, 1937, I was a member of the Medical Board at Columbia Hospital, and I have no recollection of giving any instructions to Colonel Ashburn to write that sort of letter (Gov. Ex. 538). As Government counsel read Gov. Ex. 538, I heard nothing that wouldn't be true, and it is under Colonel Ashburn's signature. I have no recollection of having seen Gov. Ex. 539 before.

Q. I want to know whether the letter (Gov. Ex. 539) refreshes your recollection that these facts were before the Medical Board some time before you voted against Dr. Selders.

A. I couldn't say. It doesn't refresh my recollection as to whether this specific letter or these specific facts were before the Board the result of this letter, but I know that such facts were before the Medical Board. Whether they came from this particular source or not, I could not say.

Q. Were these facts before the Board: that Dr. Selders had served a residency in the Worcester City Hospital in surgery between the dates July 1st, 1936, and July 1st, 1937, coming to that institution from the Pennsylvania Postgraduate School, where he had taken a course in surgery the previous year?

That as to the number of operations he performed, the only accurate figures would have to be gained from a survey of a large number of records, but scanning the operating schedules for the year he was listed at the Worcester Hospital to operate on 273 cases, of which a hundred and ninety might be classed as major and 83 as minor. That

these figures did not necessarily mean that he had performed these operations himself.

"He may have elected to assist someone else in the operation, or does it mean that this is all the operating that he participated in. He may have assisted or otherwise participated in considerably more than are shown here."

Doesn't it also give you these facts:

"Dr. Selders was a resident on the surgical service here and, therefore, did not figure to any particular extent in obstetrical work. Gynecology is here absorbed in general surgery and one may assume that he had considerable contact therefore with gynecological surgery."

Those facts, you say, were before the Board as to his experience in the Worcester City Hospital at the time they denied his application?

A. I assume that similar facts were before the Board, but I have no recollection of these specific facts. I could comment on them if you want me to, but it would not be a question of recollection.

The application for surgical privileges was referred to the Washington Academy of Surgery, which turned his application down wihout disclosing the ground (Gov. Ex. 447-A). The application was referred to the Washington Gynecological Society as to obstetrics and Gynecology, as that was the usual routine. I don't remember when the custom started of referring applications for gynecological privileges to the Washington Gynecological Society. When the Gynecological Society recommended adversely to Dr. Selders I have no recollection of their having stated any grounds for the recommendation. I didn't interview Dr. Selders myself and had no occasion to observe his technique. In voting against Dr. Selders' application I had before me the adverse recommendations, without grounds, of the Washington Gynecological Society and the Washington Academy of Surgery, and as Dr. Selders had applied in the four categories—general surgery, major obstetrics, gynecology, and normal obstetrics—so far as I was concerned, I didn't require the reference to the Gynecological Society concerning his qualifications in obstetrics and major gynecology, as I could gauge that myself. I could gauge it on the letter you (Government counsel) showed me and

his qualifications in gynecology were worse, as it showed training in a hospital where gynecology was absorbed in general surgery, and there is no worse training than that for gynecology. His qualifications merely showed him to be in a general surgical service, and that his gynecological experience would certainly not be considerable from the point of view of putting a man in a position of turning him loose in a hospital in gynecology. His experience wouldn't show him competent to do that at all.

Q. You remember it did give you this information: this is for the superintendent of the hospital,

"One may assume that he had considerable contact, therefore, with gynecological surgery?"

A. I testified that wouldn't mean a thing to me, because, as stated in the letter, that was all absorbed in general surgery.

I think we made a very good investigation of the applicant and it was entirely sufficient for the purpose of passing on the candidate under the circumstances disclosed in his application and this letter. Columbia is a special hospital having a wonderful record throughout the country in obstetrics and gynecology. It is taking no chances of putting a man of uncertain ability on its staff. The hospital did give him privileges in normal obstetrics, thereby indirectly giving him courtesy privileges and he did bring patients in the hospital, as while he was formally placed on the courtesy staff he did have the privilege of bringing normal cases in the hospital. I remember that his request for privileges at some time was broken down into different classes which finally resulted in his being given privileges of attending cases in Class III.

The Washington Gynecological Society is made up of the leading specialists in gynecology in Washington; it has a requirement for membership that a member must be a member of the District Medical Society. Dr. Crowley, president of the medical board of Columbia, was active in the Washington Gynecological Society.

I have a hazy recollection of some young man from Group Health late in 1938 applying for privileges, but I have no recollection as to who it was.

Q. Let me go back to the minutes of the medical board of April 14, 1938. Does not that refresh your recollection

that the application of Dr. A. S. Hulburt for privileges in Class III was tabled?

A. No; I have no recollection of it at all. The minutes may show whether I was present at that meeting. There were a whole lot of meetings that year particularly that I never attended, and I may not have been there; so I have no recollection of it at all.

Q. Did you know that he resigned from Group Health Association on April 25?

A. I may have known it at the time, but I have no recollection of it.

Q. Did you know that he was given Class III privileges at your institution in early June, 1938?

A. I have no recollection of that, Mr. Lewin. You see, this whole thing was minor, as far as I am concerned.

Q. Perhaps it was, but I am trying to get the facts.

A. That is all right. I am merely trying to excuse myself for not remembering well.

Q. Will you look at my notes on the minutes of the meeting of the Medical Board on June 9, 1938? Dr. A. S. Hulburt's application was approved for Class III on that date, was it not?

A. What are you asking me?

Q. Whether that refreshes your recollection that after April 25, to wit, in June of 1938, he was approved for Class III in your institution.

A. I am terribly sorry. All it does is to bring back a hazy recollection to me of having heard that name before the Medical Board.

Q. Is not your hazy recollection this, that Dr. Hulburt applied when he was a member of Group Health Association and was not given privileges, and his application was tabled until after he resigned from Group Health Association, and then a little over a month afterwards he was given privileges there? Is not that your recollection?

A. It is awfully hard for me to separate in my mind what I remember and what I know now; but it begins to clear up in my mind a little; yes.

Q. Would you say that my question is correct?

A. I have no doubt it is correct. In fact, if you ask me if it is so, I would say yes, undoubtedly, because the record seems to show it.

Q. Would you testify that his connection with Group Health Association had something to do with postponing it until after he had resigned?

A. I have no recollection of that.

Q. Dr. Halstead, another Group Health Association doctor, testified that he applied at your hospital. Do you recall that?

A. I do not even have any recollection of there ever having been a Dr. Halstead connected with the GHA or having applied.

Q. Were you not present at the meeting of the Medical Board on December 9, 1938? My notes show that you were.

A. Maybe I was, but I have no recollection of it.

Q. December 9, 1938. Do not these notes refresh your recollection to this extent, that on that day the application of Dr. Clark D. Halstead for Class III privileges was postponed pending further information?

A. I have no recollection whatsoever.

Q. You have none?

A. None at all.

Q. Would you say that you attended that meeting?

A. If the minutes say so. I have no recollection of it at all. I do not know any more about where I was on December 9 than you do, I guess.

Q. I suppose you would not question that that was the treatment that was given his application?

A. No.

Q. Would you say that his connection with Group Health Association had something to do with deferring action from August, when he applied, to December, 1938, and then deferring it further at that meeting?

A. What was he applying for?

Q. Class III privileges, normal obstetrics—isn't it?

A. That is normal obstetrics. And you are asking me what?

Q. Whether, in your opinion, his connection with Group Health Association accounted for the fact that although he applied in August his application was deferred until December 9, 1938.

A. I cannot answer that positively. There were other factors coming in at that time. Everybody who was applying there at the same time was postponed because the hospital staff was so full that we could not take care of patients. Whether that action was in connection with this or not

I don't know. I have no recollection of any discussion about the GHA in connection with Dr. Halstead, or anything about it. I don't even recollect that there was such a man.

Dr. Sylvester, who is on the staff at Columbia, is a member of the Gynecological and Medical Societies. Drs. Pagan, Kotz and Stan n were not members of our attending staff but were members of the courtesy staff. Dr. McNitt, a member of our attending staff, was secretary of the Gynecological Society. At the meeting of the medical board of November, 1938, Dr. Sprigg's motion to reconsider Dr. Selders' application for privileges in Classes I and III and that he be not endorsed was not passed, but my substitute resolution that it be considered inadvisable to act at the time of his application was carried with the net result that Dr. Selders, instead of being denied privileges in Class III, practically got privileges in Class III during the pendency of his application.

Q. Thank you, Doctor. I have just a few more questions about other phases of your testimony. I understood you to say on your direct examination that when you first learned of Group Health Association on May 16, 1937, it was at Dr. Morgan's office; and with reference to section 5—and I am going to call it Section 5 for brevity, and not go through the rest of it. That is the only Section 5 involved, is it not?

A. Yes. Thank you very much.

Q. Section 5 of the constitution had been in force for 14 months?

A. It had been in force a year before the preceding January. That was in 1937, was it not?

Q. Yes.

A. Yes, sir.

Q. Did you not mean by that testimony that it had been in force as Section 5, but in a radically different form and substance?

A. No; I did not. I testified that it had been modified.

Q. You testified it had been modified only in some minor particulars.

A. It seemed to me to be minor.

Q. Is not this the way it read when it was adopted January 8, 1936 (reading):

"No member of the Society shall engage in any professional capacity whatsoever with any organization, group,

or individual engaged in the practice of medicine unless the Society has received proof that the profits from such practice inure to the benefit of the medical profession only."

A. I assume it was. I know it was a different form.

Q. Did it not remain in exactly that form until March 3, 1937, for a period of fourteen months?

A. That is my recollection, precisely.

Q. When you learned about Group Health and when you discussed it, did you not understand it to be a non-profit organization??

A. I think so; definitely; yes.

Q. Is it not true that when you amended it, it read as follows—

The Court: When was the amendment

Mr. Lewin: March 3, 1937, some 14 months later.

Mr. Burke: There was an amendment on January 6, 1937, also.

The Court: We are speaking about this one.

By Mr. Lewin:

Q. As a matter of fact, it was not amended on January 6, 1937, was it?

A. My impression is the same as yours, that it came up for action, and then I think it was referred back because they wanted to put some more words in it, and it went back to the Executive Committee again. That is my recollection.

Q. On March 3, 1937, it was amended to read as follows, was it not:

"No member of the Society shall engage in any professional capacity whatsoever with any organization, group, or individual by whatever name called or however organized, engaged in the practice of medicine within the District of Columbia or within ten miles thereof, which has not been approved by the Society."

I will not read the rest, because that is with reference to the machinery. But is not that the way it read when you amended it?

A. I assume it did. I never carried it in my mind.

Q. Dr. Willson, I have only a few more questions.

I was questioning you when we adjourned with regard to the amended Section 5. Now, isn't it true that on March

3, 1937, that section became substantially changed from what it had been before?

A. Well, Mr. Lewin, that was never my understanding of the matter. The section was introduced originally, and was so understood in the Medical Society always, as a method for controlling the practice of members and the relations of the Society to members who were engaged in contact practice under the Workmens Compensation Law.

Q. But by its terms it was not limited to Workmens Compensation clinics, was it?

A. Oh, no, but I mean that was what lay back of it ever having been introduced.

Now, to continue to answer your question, I personally never had the feeling—I don't recall the wording of the thing in either form in my mind—but I never had the feeling that it was substantially changed.

Q. Before March 3, 1937, it applied only to organizations where profit accrued to laymen, whereas after that date it applied to all persons practicing medicine and to all organizations practicing medicine whom the Society did not approve of for any reason it chose; is that right?

A. May I compare them? Will you show me where the two are?

Q. Yes, sir. I now show you a copy of the section as adopted January 8, 1936.

A. This is Section 5?

Q. Section 5, yes.

A. Now, let us take the other one.

Q. This is the way it was changed on March 3, 1937.

A. I would say that the wording of the provision adopted in lieu of the original in March, 1937, was somewhat more inclusive than the original.

Q. So that we will be clear about it, isn't this true: that before the change it simply limited your members from having participation in clinics where profit from those clinics went to laymen, whereas after the change it forbade members from having any participation whatsoever with any persons practicing medicine if those persons were not approved by the Society for any reason?

Mr. Richardson. We object to the question on the ground that it calls for a conclusion of the witness and is purely argumentative; further, the documents speak for themselves.

Mr. Lewin. I am simply asking for the understanding of the witness.

The Court. I think that is strictly true, Mr. Richardson; however, the doctor has stated his understanding to be that there was no substantial change, and it may be that this cross-examination is reasonable.

By Mr. Lewin:

Q. Will you answer the question?

A. Then, you will have to repeat it.

Q. Isn't it true that before the change it forbade your members from having anything to do merely with clinics that had a profit, where some of that profit went to laymen, whereas after the change it forbade your members from having anything to do with any persons practicing medicine unless they were approved by the Medical Society, for any reasons the Medical Society saw fit?

A. Well, I testified, and I think as I read this now, that this latter provision seems to me to be more inclusive, from the point of view of its wording; but from the point of view of my understanding of the practical application of the thing, I never had any opinion that there was any difference.

Q. But I want to be clear about this, and I should like to have a direct answer, if you can make it, to my question.

A. I think I stated that: that I thought that more inclusive. The language here was more inclusive.

Q. Didn't you understand that its application would apply to the Group Health Association?

A. No, never in the world, because I had had no knowledge of Group Health Association for two months later or more.

Q. As a matter of fact, didn't you invoke this other section with regard to Group Health Association?

A. I never did.

Q. Didn't you? Well, let's see. You testified that you presented this resolution, did you not?

A. Yes.

Q. At the November 3 meeting of the Society?

A. That is right.

Q. That was directed to Group Health Association, wasn't it?

A. No, sir.

Q. What?

A. No, sir.

Q. It was not?

A. No, sir.

Q. Was it directed to Group Health Association doctors?

A. No, sir.

Q. What did you mean by this language:

"Whereas, The Medical Society of the District of Columbia has an apparent means of hindering the successful operation of Group Health Association, Inc., if it can prevent patients of physicians in its employ being received in the local private hospitals"?

A. I meant just what it says: that it has an apparent means.

Q. Wasn't your resolution addressed to the Group Health situation?

A. Never had, really—Except indirectly, it had no connection with the Group Health situation whatsoever.

Q. What was the purpose of reciting at the very start that you had "an apparent means of hindering" its operation?

A. As I explained in my direct testimony, the reason for bringing in that resolution, except the "Resolved" down here (indicating), was that the thing be referred to a committee, which would present a resolution at the Medical Society, which would prevent the sending of that letter to the boards of directors of the hospitals, and to obtain enough votes, as an old medical organization man, familiar with what had to be done to get things in the Society—to get enough votes to get it passed and get that letter—proposed letter—stopped. There was the whole thing with reference to that resolution, and nothing else but that.

Q. All right. Now, do I understand that you knew you could not get enough votes for your resolution unless you made it appear that it was directed against Group Health Association?

A. I didn't know anything of the sort. How could I know how many votes I would get? All I knew was that there was a great deal of difference of opinion and a great deal of turmoil in the Society, and any number of different views on the subject.

What I wanted to do was to present a resolution which would attract enough votes to stop the sending of that letter and bury the whole thing in the committee.

Q. Wasn't this turmoil in the Society, turmoil with regard to the Society's attitude toward Group Health?

A. It was the clashing views of many different individuals and convictions as to the threat involved in GHA. Some thought it was no threat at all; some thought it was a great threat. Some wanted to attack the problem one way, and some another.

I felt it was making a mistake, as far as the Society was concerned, and my resolution was certainly not to protect GHA, neither was it to attack it. It was to protect the Society against a course of action which, in my judgment, could not be sustained and would only, if it were put through, make the Society ridiculous.

Q. You mean a course of action with regard to Group Health Association?

A. I mean a course of action with regard to calling the attention of the lay boards of hospitals to the provision of the constitution, which, as I have testified, I was always opposed to. I was opposed to this thing ever getting into the constitution. I tried to get it out, and for months and months after any of the GHA situation developed, I was persistently and consistently opposed to the application of that provision of the constitution to the GHA.

Q. You knew that the Sprigg letter, which you opposed, was directed to Group Health Association, did you not?

A. It was directed to the lay boards of the hospitals, but I know what you mean: it was motivated by the GHA situation.

Q. Yes, the purpose was to take care of the GHA situation?

A. I don't know what the purpose was in the mind of the proponents, but it was certainly, in my judgment, connected with the GHA situation; it couldn't be anything else.

Q. It couldn't be anything else?

A. I don't think so.

Q. You could not think of any other purpose for it?

Mr. Laskey. For what?

By Mr. Lewin:

Q. For the Sprigg letter?

A. At that particular time—Of course, it could have been applied to many other situations with respect to the hos-

pitals, but at that particular time the natural assumption was that it applied to the GHA.

Q. As a matter of fact, you don't know of any other situation to which it was applied?

A. Not at that particular time, no.

Q. You were offering this resolution as a substitute for the Sprigg letter, weren't you?

A. That is right.

Q. So, your resolution, too, then, was directed to taking care of the Group Health Association?

A. I have testified, Mr. Lewin, and you can't make me say that, because it isn't true. I testified that my sole purpose in this resolution was to stop the sending of that letter. The fact it was concerned with the GHA situation was purely coincidental.

Q. You believed what you stated here, didn't you, in recital No. 1?

A. Yes, I did—that it had the apparent means. Just underscore that word "apparent."

Q. You believed that on November 3, 1936, didn't you?

A. That they had the apparent means?

Q. Yes.

A. Yes.

Q. On November 3, when you had that belief, it preceded by five days or eight days Dr. Selders' application to your hospital; isn't that so?

A. I have no more idea of that relationship in time. I have no recollection of any such relationship.

Q. When you got Dr. Selders' application, you still thought, didn't you, that your Society had the apparent means of hindering Group Health Association, if you could prevent Dr. Selders from being in the hospitals?

A. Oh, I don't know, because this language you refer to in this first paragraph occurred to me about 20 minutes past 5, for the first time, on the afternoon I introduced it.

Q. But after you put it into the resolution, you still had that possibility in mind, didn't you, when you considered Dr. Selders' application?

A. Well, I am afraid—I am sorry I have lost——

Q. When you considered Dr. Selders' application, which I believe was sent to your hospital on November 11——

A. (Interposing) Yes.

Q. (Continuing) You had in mind this belief, didn't you, that the Medical Society had an apparent means of hinder-

ing Group Health Association if it could prevent any of the Group Health doctors from being received into the local hospitals?

A. I certainly did not, because I had advocated an entirely different—as far as my opinion was concerned, the matter of GHA physicians in hospitals should have been handled in an entirely different manner. I can tell you what I thought about it, if you want me to.

Q. I think you have told us a lot about it.

Didn't you also say that the Medical Society has some control over the policies of the hospitals? Didn't you say in substance that it had some control over the policies of hospitals by its control over the members serving on the staffs?

A. I said it has no direct control over the policies of hospitals as determined by their boards of directors except through its control of its own members serving on the medical staffs.

Q. So, you did believe it had that much control?

A. That is exactly what I did not believe, and that is the reason the resolution was introduced, to keep the Society from getting into a ridiculous position with the hospitals.

What would have been the result of sending this letter? Suppose the boards of directors said to the Medical Society, "You go and attend to your own business; we will attend to ours."

The situation had come up—exactly the same situation—before, when I was on the executive committee, and the Medical Society, as my recollection goes now, on the advice of the American Medical Association and the American College of Surgeons, had to back down.

Q. What do you mean by this:

"except through its control of its own members serving on their medical staffs"?

A. Mr. Lewin, I meant what it says. The only method of control—direct control—over the policies of hospitals which the Medical Society could possibly exert would be through the control of its members serving on those staffs.

Q. But you meant it did have that much control?

A. I just testified I didn't feel it had that much control, because I had seen the thing come up before, and the Medical Society had to back down, because it proved it didn't have it, for the reason that it was my opinion throughout

this whole controversy that if it ever came to a showdown between the Society and the members of the Society who were hospital staff physicians, they would stick with the hospital rather than with the Society.

Q. Then, why didn't you say it didn't have any control at all about anything, about any of the staffs?

A. Because it never would have gone through the Society in that form. In other words, the letter would have gone out, and the motion would have been lost.

Q. In other words, you mean to say you were not really sincere?

A. I was subtle; let us put it that way.

Q. Do I understand that it is your testimony that although you put those two recitals there in the resolution, you did not mean them? Is that what it comes down to?

A. Well, I wouldn't go that far, Mr. Lewin.

Q. Did you mean them, or didn't you mean them?

A. I said in the first one—the gist of the words—

"Whereas, the Medical Society of the District of Columbia has an apparent means of hindering the successful operation of Group Health Association, Inc,—"

Q. (Interposing) Did you mean that?

A. I meant just that, if you underscore the word "apparent." It appeared on the surface that it had.

Q. It is not underscored, but let us assume it is underscored. Did you mean it as if is written if you underscore the word "apparent"?

A. Yes.

Q. Now, the second one. Did you mean that?

A. "Whereas, The Medical Society of the District of Columbia has no direct control over the policies of such hospitals as determined by their lay boards of directors, except through its control of its own members serving on their medical staffs; * * *"

That is a statement of fact. That is the only possible way they could control the hospital.

Q. Did you mean that?

A. I meant that—just as it reads.

Q. Now, then, did you mean this statement in the third recital:

"Whereas, Conflicts between the Medical Society of the District of Columbia and any local hospitals arising from

an attempt to enforce the provisions of Chapter IX, Article IV, Section 5, of its Constitution should be assiduously avoided, if possible, because of the unfavorable publicity that would accrue to its own members"?

A. Yes, I certainly did.

Q. Did you mean that that was the reason why you were offering the resolution: to avoid unfavorable publicity?

A. No; there were many other reasons, as I have testified; this was one of them.

Q. Did you give any other recitals in that recital?

A. I gave them in my testimony; I didn't give them in there.

But please remember this thing was done in 15 or 20 minutes on my desk late in the afternoon, and I am not proud of it as a literary effort.

Q. I am not questioning its literary merits. I am trying to see what was meant by it.

The reason you gave there, and the only reason, was that conflicts would bring unfavorable publicity?

A. Conflict should be avoided for any reason, because it would bring unfavorable publicity.

Q. That Section 5 was the same Section 5 amended March 3, 1937?

A. This is November, 1937, and therefore this refers to the final adoption in March; that is correct.

Q. So, here you have a resolution to take care of the Group Health situation, and the thing you refer to is Section 5; isn't that so?

A. It is not to take care of Group Health Association at all; it is to take care of an intramural situation within the Medical Society which had to do with Group Health. Beyond that I will not go, because it is not true.

Q. The resolving part of the resolution was referred to the Hospital Committee in the first instance?

A. That is right.

Q. Why did you refer it to the Hospital Committee?

A. That is the first one that came into my mind. There was no ulterior motive in that. It was a group of physicians each one of whom was on the staff of a hospital, and who were therefore familiar with the situations that develop between staffs and hospitals, and so forth, and it seemed to me that they were the very group of men in the Society who would probably succeed in smothering this

effort to send out this letter of which I disapproved so heartily.

Q. You did not refer it to the Hospital Committee to smother the letter, did you? You moved this resolution in lieu of the letter, and that killed the letter?

A. I moved it in lieu of the letter, because I didn't want the letter—If this motion prevailed, the letter does not go out.

Q. Precisely.

A. The letter I left in the hands of the Hospital Committee.

Q. No, the letter has gone.

A. Well, I mean the letter matter is left—Toward whatever the letter was aimed is left in the hands of the Hospital Committee; and not being an officer or member of a committee of the Society, my responsibility was completed there, as far as I was personally concerned. If they had never reported it out, it would have suited me ideally.

Q. You don't mean that you would refer it to the Hospital Committee for the Hospital Committee to deal with the letter, do you?

A. "* * * to all phases of this subject," and naturally the purport of the letter and all phases of this subject could not refer to anything but the letter, and that was the matter of approaching the lay boards of the hospitals.

Q. You knew that the Hospital Committee had one representative of the attending staff of each one of the hospitals, didn't you?

A. Oh, yes. Yes, I was thoroughly familiar with it.

Q. So, if you were going to bring pressure, as you say, or any control over your members serving on the staffs, that would be the logical committee, and that was why you picked it out?

A. That is not true.

Q. Do you mean to say you just picked out the Hospital Committee because it happened to be the first committee which came to mind?

A. I already explained that.

Q. Now, you wanted that Hospital Committee to make recommendations as to the best way of bringing this question to the attention of the Medical Boards. What did you mean by "this question"?

A. This question that was proposed in the letter. That was the reference to—What do you call it?

Q. Group Health Association?

A. No, the section. Section 5?

Q. Yes.

A. Yes.

Q. Doesn't "this question" mean the Group Health Association question?

A. No, to Section 5, I suppose. Let me read it:

"Resolved, That the Hospital Committee be, and is hereby, directed to give careful study and consideration to all phases of this subject"——.

Now, this resolution was in lieu of the letter, and the subject was proper on the boards of various hospitals—"and report back to the Society, at the earli st practicable date, its recommendations as to the best way of bringing this question to the attention of the medical boards and boards of directors of the various local hospitals in such a manner as to insure the maximum amount of practical accomplishment with the minimum amount of friction and conflict."

I can't say exactly as to what I had in mind. I can only say that if the Hospital Committee had brought in a report that the matter should be handled along the lines, for instance, I testified this morning that it had been at Garfield, about their letting them in upon determination——

Q. Letting whom in?

A. The staff physicians.

Q. Of whom?

A. GHA.

Q. Oh.

A. (Continuing) Either give them privileges in the hospital if qualified—now, please note that: if qualified—or keep them out.

Q. Do you say anything about it?

A. No, I don't say anything about it. You asked me what I had in mind. I am trying to tell you.

I say if the Hospital Committee had brought in a report and said, "We recommend that these men all be excluded pending determination of the legality of their practice; or if they be found qualified, they be admitted pending determination of the legality of their practice," that would have satisfied me a hundred per cent, because I thought it was the way the situation should be handled.

Q. When you say, "That the Hospital Committee be, and is hereby, directed to give careful study and consideration to all phases of this subject," do you mean by this subject the Group Health Association controversy?

A. No, I meant the proposed approach to the hospitals.

Q. Wasn't the only proposed approach to the hospitals in connection with Group Health?

A. I have already stated that.

Q. The resolution reads:

"Resolved, That the Hospital Committee be, and is hereby, directed to give careful study and consideration to all phases of this subject and report back to the Society, at the earliest practicable date, its recommendations as to the best way of bringing this question to the attention of the medical boards and boards of directors of the various local hospitals,"

and there, by "this question," wasn't the question this approach to the hospitals in connection with Group Health?

A. In connection, first, with the Section 5 as it applied to Group Health, if you will say that.

Q. I am agreeable to that. As applied to Group Health Association?

A. I think so.

Q. As I have just stated, it was within a month that you got this Selders application?

A. I don't know when it was. I have no recollection of when it came at all.

Q. Didn't Dr. Smith speak there in favor of your resolution in this way: Didn't he say he felt that this information could be conveyed to them orally, when they would have nothing to fight back with? Do you remember that?

A. No, I have no recollection of it, but it is apparently in the minutes. I suppose he said something like that. I have no control over what he said.

Q. Do you remember Dr. Hooe, a defendant in this case, saying this:

"• • • he was of the opinion that Dr. Willson's substitute offered some sound points, one in particular that which suggests that this committee be composed of members of the hospital staffs. He thought it was inconceivable that the hospitals would not acquiesce to reasonable principles. Another objection he had to Dr. Willson's resolu-

tion was that the committee is delegated to take its time and report back to the Society."

Do you remember that discussion?

A. Only because I have read this over, and it has been recently refreshed in my mind. I have no control over what Dr. Hooe said.

Q. Didn't you yourself say this with regard to the Sprigg letter, when you were urging adoption of your substitute:

"• • • he felt that the letter carried a veiled threat to the effect that if the hospitals did not comply the Society would unstaff them."

A. I think if it is there I certainly said it.

Q. Did you continue and say that you hoped the Society could control its own members?

A. What did I say after that?

Q. Sometimes you had a little doubt.

A. I had a great deal of doubt. That is the reason I introduced the resolution.

Q. But you hoped for it?

A. I hoped the Society was important enough to its members so that they would stick with it rather than with anything else, but I doubted it and still do.

Q. Right after that didn't you hear Dr. John A. Reed say that he was informed that every hospital in the city was cooperating with the medical profession against the Group Health Association, with one exception?

A. Well, I may have heard it. I have read it recently, but I have no independent recollection.

Q. You remember a discussion of that character occurring?

A. I remember a discussion; that is all.

Q. Then, you say, you were present on November 11, I believe, when the Hospital Committee reported?

A. That is my recollection, yes.

Q. The chairman of that Hospital Committee was the defendant Warfield; is that so?

A. I believe so.

Q. Wasn't he reporting pursuant to the requirements of your resolution, which had been passed?

A. Absolutely.

Q. Do you remember that his report was rejected because it was not strong enough?

A. I remember it was rejected on a motion of somebody.
Q. Wasn't it rejected because it simply said——
A. (Interposing): What was the language?
Q. Well, let us find it.

"Dr. J. Ogle Warfield, Jr., chairman of the Hospital Committee, was recognized. He submitted the following report, pursuant to resolution which was adopted by the Society on the evening of November 3."

That was your resolution?

A. That is my recollection.
Q. (Reading):

"In view of the resolution adopted by the Medical Society of the District of Columbia on the evening of November 3, 1937, the Hospital Committee held a meeting, at my office, on the evening of November 9, 1937, and recommends that the Medical Society of the District of Columbia send the following resolution to the Boards of Directors of those hospitals"——

A. Interposing): No, to the Medical Boards.
Q. (Continuing reading):

"'to the Medical Boards of the various local hospitals for interpretation to the Boards of Directors of those hospitals.'"

A. That was a change right there, you see, from the original proposal, which was a direct approach to the boards of directors.

Q. You mean this was a direct approach?

A. No, the letter for which mine was a substitute was a direct approach to the boards of directors.

Q. Your substitute contemplated approaching the boards of directors through the medical staffs?

A. Not at all. The original letter contemplated that. My motion tried to stop its being done.

Q. Doesn't this do the same thing?

A. No: "* * * send the following resolution to the Medical Boards" of the different hospitals.

Q. Isn't that what you advocated?

A. No, I didn't advocate any action; I simply made the resolution.

Q. I don't know what your point was with regard to the letter. The letter was to go directly to the directors?

A. That is what I am trying to say. The Sprigg letter was to go directly to the directors.

Q. You didn't like that?

A. I didn't like its going out at all. I didn't like its referring to Section 5, which, as I have testified, was not in my favor.

Then, here, the original proposal was to approach the boards of directors. My resolution stopped that and referred the matter to the committee, and then the committee came in on November 11 and urged sending the following resolution to the medical boards of the hospitals, which is a different proposition.

Q. Your resolution had pointed out that the way to approach the problem was through the medical boards?

A. No, that is not my recollection.

Q. Except for the control exercised over the medical staffs?

A. Over its own members—controlled over its own members of the Society who happened to be serving on hospital staffs. That would include, of course, more than the medical board; it would include the courtesy staff as well.

Q. And courtesy staffs have no influence as to who is to be elected to the staffs of hospitals?

A. No. My statement referring to the control of the Society over its members on hospital staffs included the attending staffs and the courtesy staffs.

Q. This was what Dr. Warfield sugggested:

"That the hospitals accept patients from Group Health Association, Inc., provided that Group Health Association, Inc., is responsible for their financial obligations."

A. Yes.

Q. (Continuing):

"That these patients only be treated by the attending, associate, assistant and courtesy staff physicians of the respective local hospitals."

A. Yes. Now, what is it?

Q. That would mean, would it not, that the Group Health Association patients could be treated by people like Dr. Scandiffio, who was on the courtesy staff of Sibley, for instance?

A. Yes, or—Yes.

Q. Then, is it not true that one doctor in the discussion, Dr. Daniels, said that he was of the opinion that members

of the local medical staffs of hospitals were required to be members of the Medical Society of the District of Columbia, and that he would inquire if any of the members of the staff of Group Health Association were now members of the Society? Do you remember that?

A. It is so recorded in the minutes. I have refreshed my memory of it recently; I have no independent recollection of it.

Q. Don't you understand his point to be that under that resolution suggested by Dr. Warfield, or that communication suggested by Dr. Warfield, a man like Dr. Scandiffio, who was still a member of the District Medical Society, might be a member of the courtesy staffs of some of the hospitals and, therefore, could treat Group Health Association patients?

A. Yes. He apparently was trying to get information as to whether any of the staff of Group Health Association were still members of the Medical Society of the District of Columbia.

Q. Do you recall what Dr. Neill said in answer to that question?

A. No.

Q. Could you refresh your recollection by looking at the minutes?

A. It would call up no recollection independent of the fact that I would assume the minutes was correct if it were read to me. I would have no recollection of it, I am sure.

Q. Do you know what happened to that resolution of Warfield's?

A. It was re-referred. I know that it was re-referred to the committee.

Q. Do you know the grounds on which it was referred?

A. It was re-referred to the committee. I know there was some discussion about it, and my recollection is again refreshed from having read these things over in the last few weeks. There was a question as to whether the provision of the original report would cover GHA physicians practicing at the hospitals—I mean some way to prevent their practicing, or would not prevent it; something of that sort. That is my recollection of it. It was along that line.

Q. Then, wasn't a motion made by Dr. Yater to recommit it because there was no assurance given that Group Health Association doctors were not on the staffs?

A. That is my recollection.

Q. Did you vote for it?

A. I have no recollection, Mr. Lewin. Let me see it.

No, I have no recollection one way or the other. My best belief would be that I didn't, because it wasn't—because I wasn't in sympathy with that method of approach at all.

Q. The resolution was seconded and finally adopted, according to the minutes. Do you know who seconded it?

A. No, I don't.

Q. Isn't it true, then, that on December 1, when you were also present, Dr. Warfield's committee made a further report pursuant to that resolution recommitting it?

A. Yes. Well, Mr. Lewin, I remember distinctly having been present at the meeting of November 11. I have no independent recollection of having been at that meeting of December 1. I may have; I simply don't recall whether I was there or not.

Q. But you do know, do you not, that pursuant to that report of December 1 the resolution was adopted?

A. Oh, yes. At least, I know that from the minutes, yes.

Q. You do know that the effect of that was——

A. (Interposing): To call the attention—To request the medical boards of the hospitals to call the attention of the boards of directors to what I have now learned was the Mundt Resolution.

Q. Did you follow out the rest of the procedure followed by the Hospital Committee under that resolution?

A. I don't believe I understand your question, quite, Mr. Lewin. What procedure?

Q. Did you know that later, in February of 1938, a resolution was passed by the Society, asking for a report on what the status of Group Health doctors was in the various hospitals?

A. I believe that that matter has again been refreshed in my memory from various minutes recently. I have no recollection of it. You misunderstand. The resolution I had made was just to prevent action by the Medical Society which I disapproved of. My interest has waned from there on. I have done my best to accomplish what I wanted, and I wasn't materially interested in the matter one way or the other.

Q. Did you object to the later proceedings taken by the Hospital Committee and the Society after your resolution

with regard to admitting Group Health doctors into hospitals?

A. Well, the proposal—As I have testified, I don't even remember being present at that meeting when it came up; and when it got to the hospital boards, as I testified this morning, it was apparently in my absence, and the first chance I had anything to do with it was when the medical board came back with the recommendation that we move to rescind it, and I moved to rescind it.

Q. But you knew that there was such a recommendation at the time you were passing upon Group Health doctors' applications?

A. No, I have no recollection of that at all. I don't even remember when I was passing on Group Health applications.

Q. Didn't you know that if that recommendation was followed, Group Health doctors could not be in the hospitals, regardless of their personal qualifications?

A. It didn't make any difference what I knew about it. I was the one who moved that it be rescinded, so I couldn't have been very much in favor of it, since I moved to rescind it.

Q. Well, did you ever move to rescind the action of the Hospital Committee?

A. What action?

Q. The action of the Hospital Committee in sending out questionnaires and getting facts as to the status of Group Health doctors in the hospitals?

A. I don't even know. I was present at those meetings and had no interest.

Q. I think you testified that you did not raise any objection to Dr. Scandiffio's treating babies whom you had delivered?

A. That is correct.

Q As a matter of fact, isn't it the ordinary practice of an obstetrician to carry the case through until after the birth of the baby and then to give the case, as far as the health of the baby is concerned, up?

A. It varies greatly in different jurisdictions and according to the practice of different individuals. I know one very prominent obstetrician in town who refuses to let a pediatrician get into the hospital over his dead body to look at a baby he has delivered. As far as I am concerned, as I told you this morning, the sooner I get rid of them,

the better. But if there is no pediatrician in attendance—I mean if the patient—the father or the mother of the child—does not request a pediatrician, I naturally, to the limited extent of my ability with babies, keep track of them as long as they are in the hospital, to see that they are doing all right until they go home, and then I have them call a pediatrician.

Q. But you do not call Dr. Scandiffio yourself?

A. No, the patient calls him; I wouldn't call him in. I follow the usual procedure of telling the nurse to call him up. I never contact pediatricians.

Q. You do not contact Dr. Scandiffio yourself?

A. No, I have no recollection of having asked him.

Redirect examination:

My action in voting as I did with respect to Dr. Scandiffio was not influenced or controlled at all by the fact that he was a Group Health doctor; it was controlled by the fact that he had violated three or four different provisions of the constitution. My action in voting as I did with respect to Dr. Selders at Columbia Hospital was not controlled or influenced at all by the fact that he was a Group Health doctor, as there was no question in my mind whatsoever that he was not qualified to do the work he requested permission to do in his original application. Dr. H. J. Russell McNitt was a member of the staff, and was one of the attending surgeons in gynecology at Columbia, and is now on duty with the United States Army at Denver. He is a member of the Gynecological and Medical Society, whom I have known 15 years; I know his work on the staff; I also know he is a diplomat of the American Board of Obstetrics and Gynecology, which is the highest evidence of professional ability in that specialty that any man can provide in the United States; that means that he has passed an examination, written, oral, and practical, and is certified as a specialist in obstetrics and gynecology by the American Board of Obstetrics and Gynecology, a national organization, and is certified as a specialist and expert in obstetrics and gynecology, limiting his work to that specialty.

Def. Ex. 51 was received in evidence and read to the jury as follows:

"December 30, 1937.

"Col. P. M. Ashburn, Supt. Columbia Hospital, Washington, D. C.

DEAR COL. ASHBURN:

I am directed to report on the following physicians whose names were submitted to the Society for advice, concerning qualifications for courtesy privileges on your staff: Drs. Oliver C. Cox, Richard Castell, Raymond Selders.

We do not consider them qualified to do operative obstetrics.

Sincerely yours, H. J. Russell McNitt, M. D., Secretary."

DR ELIJAH WHITE TITUS, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I reside in Washington; I have been a doctor, a practicing physician in Washington, since 1911. I graduated from George Washington University Medical Department in 1910. I had one year and three months at Columbia Hospital for Women, and in the fall of 1919 I received an appointment as resident gynecologist at one of the hospitals in New York, where I spent a year; then I returned to Washington and began to practice my profession, limiting my work to obstetrics and gynecology; from 1912 to 1919 I was assistant deputy coroner and then deputy coroner for the District of Columbia. I am a member of the Medical Society and a Fellow of the Washington Gynecological Society, and of the Galen Hippocrates Society. The Gynecological Society was formed by a group of obstetricians and gynecologists. I was its president during 1937-1938. In 1937 I was chairman of a committee engaged in assisting hospitals in determining the qualifications of applicants for privileges of practicing on hospital staffs. The committee was appointed by the gynecological society as it was felt that the committee was necessary, as the hospitals had a very definite responsibility to the public in the men that they admitted to practice, especially in special branches. I was a member of that committee in the fall of 1936 but in

that year the committee had little to do, as we were forming. In the first part of 1937 we sent a form letter out and had a few meetings and a few applications. In 1937 that committee was dismissed and I was appointed chairman of a new committee composed of Dr. Kane, Dr. Kotz, Dr. Martel, and Dr. Sylvester, and we were fairly active from October on, in 1937.

I have had some connection with the staff of Columbia Hospital since 1911, and I am now one of the attending gynecologists, and chairman of the medical board, and, at present, I am a member of the Board of Directors of the hospital. In 1937 Dr. Raymond E. Selders made application to the Columbia Hospital for privileges. The hospital sent that application to my committee in the Washington Gynecological Society for determination of the qualifications of Dr. Selders and furnished us with a copy of the application, together with his references and also certain statements of the amount of surgery he had done, both in Worcester, Massachusetts and Houston, Texas. We sent communications to the references given and received replies, one from Dr. Robert A. Johnston, a prominent obstetrician and gynecologist in Houston; the other from a Dr. Berry, one of the surgeons of the staff of Worcester Hospital, and it came to me through Dr. Bullard of the surgical staff of the Women's Hospital. I don't have the original letter from Dr. Johnston, as he requested that I destroy it, which I did, his statement being that the contents of the letter were so unfavorable and he had made a frank statement of the thing, but he felt he would rather have it destroyed. The letter was quite unfavorable in content to Dr. Selders.

I received Def. Ex. 52, a letter dated December 16, 1937, from Dr. Berry to Dr. Bullard from Dr. Bullard.

Def. Ex. 52 was received in evidence and read to the jury as follows:

"December 16, 1937.

Dr. Edward A. Bullard, 580 Park Avenue, New York City, New York.

DEAR CINDY:

Your letter comes inquiring about Dr. Raymond Selders. I have discussed him with the Superintendent, Dr. MacIver and with one of the chief surgeons, of the Worcester City Hospital. He was Resident there from July 1st, 1936 to

July 1st, 1937. The story goes that he was a graduate of the University of Oklahoma and then practiced in Dallas, Texas, for ten years. Apparently he took a surgical internship in there somewhere. Then he went to the University of Pennsylvania where he had, they think, two years of a basic post graduate course in surgery. He came from there here for the completing year in practical surgery.

While here, he is listed as having taken active part in 273 operations, 190 of which would be classed as major and 83 as minor. Dr. MacIver does not know whether he did any more or whether he did all of these and they could not discover this point without going through all the records. This gives an approximate idea. One gets the impression that he is taking a good deal of time in preparation for his life's work. He is about forty-six years of age and now contemplates further preparation. They think he has been married twice.

The story while here in Worcester is somewhat as follows: when he first came, he seemed to feel the need of expressing his importance. He tried to convey the idea that the surgical internes should look to him for instruction and material. The discrepancy between his age and that of the interns exaggerated their objection to his policy and thus early in his Residency there was engendered lack of harmony. This lack continued on through his year of service. He himself was somewhat of an emotional and breezy type which found everything going well some days, while at other times he acted out of sympathy with the world.

This slightly unstable disposition was evidenced at times in his operative work. Sometimes he showed proper skill while at other times a seeming conceit led to careless and hasty surgery. The visiting men, either through this trait or through the animosity engendered among the house officers, hesitated to trust him with as much work as they would have liked to have done.

In retrospect, these two men whom I talked with felt that much of his trouble was due to his failure to fit into the picture when he first came. If he had been a bit more thoughtful and patient, he would have gotten off on the right foot and then the resulting harmony would have carried him along in a happy way. Finding himself out of harmony, there was a tendency to get worse rather than better. They feel that perhaps they made a mistake in taking a man so much older than the internes.

Dr. MacIver felt that he showed perhaps an average skill in his surgical work but that there was certainly nothing startling either about this skill or about his constructive research efforts. He did not go to Dr. MacIver from time to time in a complaining spirit but stuck it out as best he could.

I judge this picture fits somewhat with the opinion you have already formed about him. Placed under certain conditions I would gather that he could do good and faithful work, but put into a group that is somewhat self sufficient, where he is a stranger feeling it necessary to establish his own importance in the scheme of things, he might repeat the difficulty he had here and find his experience lacking in harmony and efficiency.

I hope this report will help you. Both the men I talked with were anxious not to injure his chances for the appointment he is seeking. But I told them that you deserved as honest a statement as could be secured and I think I have correctly interpreted their feeling.

Dr. MacIver felt that some of the staff liked him better than others and I judge that the member of the staff whom I picked was one of those who liked him the least. He would wish you to give the man all the credit you could. You will have to conclude as to whether this particular type of worker is fitted for the task he is seeking.

Cordially yours, Gordon Berry, M. D."

On the basis of the information received from Worcester and from Houston my committee came to the conclusion that Dr. Selders was unqualified for the privileges sought and so advised Columbia Hospital.

Cross-examination.

By Mr. Lewin:

The letter from Dr. Berry to Dr. Bullard influenced us to some extent, but we gave greater weight to the letter from Dr. Johnston from Houston. I happened to write to Dr. Johnston as he was a very prominent man in gynecology at Houston; I had met him and he was on the staff of several hospitals. Dr. Selders didn't give his name as a reference but stated on his application blank that he had been in general practice for seven years in Houston, and during that time has performed something like 430 operations, but

he didn't classify them as to whether they were major or minor. Dr. Selders on his application, a copy of which we have, didn't give Dr. MacIver or Dr. Byrne as references. Our committee only considered his application insofar as it pertained to obstetrics and gynecology, as we had no request to consider any application of Dr. Selders for major surgery.

I am chairman of the committee on the attending staff at Columbia and a member of the District Medical Society, on the attending staff at Garfield, have a faculty position at George Washington Medical School, which makes me chief of gynecology there. Dr. Kane, who is on the committee, is a member of the Medical Society. Dr. Martel, who is on the committee, is on the staff of Georgetown and a member of the Medical Society. Dr. Sylvester is one of the attending obstetricians at Columbia, and Dr. Kotz had courtesy staff privileges at Columbia, but no staff appointment. Dr. McNitt at that time was secretary of the Gynecological Society.

The only time I ever saw Dr. Selders was on a case at Columbia. He didn't make a request to come before our committee and we didn't invite him to. The Gynecological Society took the position that it was not up to it, a society of specialists, to advise the hospital concerning the practice of general practitioners, so we didn't consider Class III privileges, normal obstetrics. At the time we passed on Dr. Selders' application we had some other information from local men which concerned some work he had done at Garfield Hospital concerning abdominal surgery, involving a diagnosis as gynecological but it turned out to be something else. And one case involved a very definitely mistaken diagnosis, according to what we heard, and it was attributed to Dr. Selders, and that influenced us in our judgment.

Since Dr. Warfield succeeded me as chairman of the hospital committee of the Society I have only been to the Society three times. I have some knowledge of the controversy concerning Group Health, but I didn't obtain it from attending meetings in the District Medical Society.

Redirect examination:

An obstetrical case involving Dr. Selders came to our attention at the time we were passing upon his qualifications in 1937. The case involved an abnormal delivery and Dr.

Selders was watching the delivery and remarked that he hadn't done one of those for a long time, or hadn't seen one for a long time.

I recognize Def. Ex. 53 as a copy of a letter which I received from Dr. Robert A. Johnston, dated November 22, 1937.

Def. Ex. 53 was received in evidence and read to the jury as follows:

"November 22nd, 1937.

Dr. E. W. Titus, 900 17th Street; N. W., Washington, D. C.

DEAR LIGE:

Your letter received concerning Dr. Selders, and after inquiry, I found the following facts. He was in Houston during the time stated but he was not anything to brag about. He was quite interested in music, and I found out from some of his associates that he acquired a huge office and tried to attract attention that way. Apparently he has had opportunities to acquire knowledge, but he seems to get in most anyone's hair by his pushing tactics. From the reports I have obtained, I do not think that one could give him a most favorable recommendation. I feel sure that you will keep this confidential."

Then the following paragraph:

"I feel that my obstetrics will keep me here and away from the Toronto meeting. It may be possible for me to leave at the last moment.

With best wishes, I am

Your friend, Robert A. Johnston, M. D."

I attach a great deal of importance to Dr. Johnston's letter, as I happen to know him over a great many years; he is a very prominent man, belongs to a small organization called the Gynecological and Obstetrical Travel Club, and I see him each December, with very few exceptions. At the time we reported on Dr. Selders we also reported unfavorably on quite a well-known surgeon here in Washington who applied for privileges of major obstetrics in Columbia. We reported unfavorably on two members of our own Gynecological Society. As a member of the medical board of Columbia Hospital I have seen no questionnaires coming from the Medical Society to Columbia Hospital Board.

Recross-examination:

I don't have a copy of the letter I sent to Dr. Johnston eliciting his reply, but I remember I told him that we had a man who had made application to Columbia Hospital, giving certain references, one of them in Houston, Texas, and would Dr. Johnston at his earliest convenience send me a report of what he knew or could find out about him, and, as far as our questionnaire went, he gave Houston, Texas, only as a reference, without giving any doctor's name in Houston. Later, in December of 1939, I believe I informed Dr. Johnston about Dr. Selders' connection with Group Health.

Dr. James F. Mitchell, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I reside in Washington. I have been a practicing physician and surgeon in Washington since 1903. I took my preliminary training for the practice of medicine at Johns Hopkins in 1893. I graduated in 1897 and stayed on there until 1903, when I returned to Washington. I am chief surgeon at Emergency Hospital and have been since 1919, when I came back from France. I served in France four to five months as chief surgeon in Evacuation Hospital No. 32 near Toul, and in Sebastapol Hospital near Lemar. I am on the Board of Directors of Emergency Hospital and on the Executive Committee in surgical staff.

The Executive Staff deals mostly with finances and business affairs of the hospital. The Board of Directors is the board of last appeal that regulates everything. We have an attending and courtesy staff at Emergency Hospital. The rule governing applicants for privileges to the courtesy staff at Emergency was passed in April, 1936. We have been having a great deal of trouble with people who were not competent coming into the hospital to treat patients, and we considered the matter quite awhile as to having some sort of regulation to restrain this sort of thing. In April, 1936, a resolution was passed by the Board of Directors that any applicant for courtesy privileges would have to present his application and, in addition, show that he was licensed in the District of Columbia, had a medical degree, and was a

member of the Medical Society, and must present evidence of his ability to practice in the particular field in which he applied for privileges. There were 50 members on the Board of Directors when that resolution was passed, with Mr. Blair as president; other members that I recall were Dr. Willis, Mrs. Huidekoper, Ben Miner, the head of the FBI, Dr. Neill, Dr. Ruffin, Dr. Leadbetter, Dr. Kraiselman, and other medical men and laymen.

In determining the qualifications of an applicant the application is turned over to what we call a courtesy committee of three men, who investigate the applicant to the best of their ability; they then report to the staff, and his name would be brought up before the full staff at a meeting and the application discussed; every man seeking privileges is gone over in that way. If the man is known the procedure is very simple; if the man is not known, however, to any of the members of the staff and we are not satisfied as to his professional ability, then we would appeal to the Washington Academy of Surgery, from whom we would obtain a report on him, and the matter would then be further considered. The regulation requiring membership in the local Medical Society means that when a man applies for membership in the Medical Society his record is investigated, and the fact that he is a member of the Medical Society shows that he is reputable, which obviates the necessity of a good deal of investigation on our part.

Sometime in 1937 the hospital availed itself of the facilities of the Washington Academy of Surgery. Late in 1937 or in the beginning of 1938 Dr. Selders applied to the hospital for general surgical privileges and his application was referred to the Washington Academy of Surgery for investigation. We did this to save us investigation work. Following the adoption of the rule requiring membership in the local Medical Society there were members on our courtesy staff who were not members of the local Medical Society, because originally there was no courtesy staff, and we just allowed them to come in, and there were probably some excellent men who had been coming in who were not members of the District Medical Society or were members of other medical societies. Following the adoption of the rule the policy of the hospital was that new applicants had to be members of the Medical Society and present proper references as to their ability. Dr. Selders applied for privileges in general surgery and gynecology; in fact, all branches of

surgery. Such privileges are pretty broad, and they would cover any branch of surgery. We don't grant privileges at the hospital for a man to do general surgery and general gynecology, as a man is either a surgeon, a gynecologist, or an eye, ear, nose, and throat man. It is against our policy to let a man have more than one set of privileges. Before granting privileges in general surgery we must have word from someone who knows the applicant that he has done good surgery and is capable of doing good surgery. In his application Dr. Selders gave us several degrees but no men who were to vouch for these things and show that he was capable of doing his work. We then referred it to the Washington Academy to find out about these things and we got back a report from them; the reference to the Washington Academy of Surgery was verbal and the report back was verbal. Dr. Selders' application showed that he was not a member of the local Medical Society, and that matter was discussed in connection with his application, but the fact that he was a member of the staff of Group Health didn't enter into the discussion against him, and didn't make the least difference to us if he fulfilled our requirements.

When Mr. Blair informed Mr. Penniman that "Dr. Selders or other representatives of Group Health Association must first be placed on our courtesy list before they can treat patients in the hospital" (Gov. Ex. 370), he was applying our general rule, as any applicant who wishes to treat a patient in Emergency Hospital must first become a member of the courtesy staff. I am familiar with the other hospitals in the District, and I have been in a great many of them.

Q. Do you know of any hospital where it is not necessary to join or be admitted to the courtesy staff before being permitted to treat patients in those hospitals?

Objected to as opening up a collateral inquiry. Objection sustained and exception noted.

The matters and facts stated in Gov. Ex. 373 are true. (Defense counsel read Gov. Ex. 373 to the jury.) The resolution of April 17, 1936, was passed at Emergency Hospital simply because we wanted to be sure men who had the privileges could render their patients the proper service.

As a result of Gov. Ex. 391 a conference with Mr. Kirkpatrick was held at which I was present. (Defense counsel read Gov. Ex. 391 to the jury.) Mr. Russell, Mr. Kirkpatrick, Mr. Blair, and I attended the conference. They

were urging the appointment of Dr. Selders to the courtesy staff. Mr. Blair was very sympathetic but told them again, just as he had told them before in his letters, that before a man could do work at Emergency he must be a member of the courtesy staff and had to fulfill certain requirements which Dr. Selders did not do. I don't recall any applicant being admitted to courtesy privileges since the resolution in 1936 who were not members of the local Medical Society. Nothing was accomplished in the conference as Mr. Russell kept insisting that we should take Dr. Selders on the courtesy staff and Mr. Blair simply stated that he could not take anybody on that did not fulfill the requirements. I don't remember that anything was said about the refusal having anything to do with Dr. Selders' Group Health affiliation.

Cross-examination.

By Mr. Kelleher:

The verbal communication to the Washington Academy of Surgery was made through our secretary, Dr. Lyons, who was a member of the Academy himself. The verbal communication occurred when we were considering Dr. Selders' application. The communication received from the Academy simply showed us he was not qualified. The grounds for denying Dr. Selders privileges were his qualifications and one of those was that he was not a member of the Medical Society, and the other was that he was not surgically qualified. I identify Gov. Ex. 663 as the minutes of a meeting of the executive staff of Emergency Hospital of December 21, 1937. Gov. Ex. 663, the last paragraph thereof, was received in evidence and read to the jury by the Government as follows:

"Two letters from Mr. Wm. Penniman, President, Group Health Association, Inc., were read. These letters requested, first, that patients of the Group Health Association be admitted to Emergency Hospital upon the request of Dr. Henry Rolf Brown, Director, and, second, that Dr. Raymond E. Selders, Surgeon, be permitted to attend these patients while hospitalized. The Staff recommended that Mr. Penniman be informed that patients of the Group Health Association would be admitted to Emergency Hospital upon the request of Dr. Henry Rolf Brown, Director, and that

he be further informed of the regulation adopted by the Board of Directors on April 17th, 1936, requiring that all physicians placed on the Courtesy List must be members of the District Medical Society, and that since Dr. Selders is not a member of the District Medical Society, he could not be placed on the Courtesy List of the hospital."

Q. Was there any discussion at this meeting of December 21 other than the facts as shown in the minutes?

A. I shouldn't think so; I didn't read them carefully.

Q. And there isn't anything in the minutes to show that the recommendation of the Washington Academy of Surgery was considered?

A. Nothing there that I see. That was certainly not the only decision on Dr. Selders.

Q. Doesn't that show that the executive staff decided that he couldn't be placed on the courtesy staff?

A. That he hadn't been placed on the courtesy staff.

Q. Isn't that the decision of the executive staff?

A. I imagine so, yes.

Q. That decision was based on the fact that he did not have membership in the local medical society?

A. It was not by us, as I remember. That may have been sent to the society, but we always, in considering any man, consider his qualifications.

Q. But, as a matter of fact, when Mr. Penniman was notified by Major Blair on December 30, 1937 (Gov. Ex. 373), the ground stated was that he was not a member of the local Society?

A. Does Blair say that in his letter?

Q. Will you look at exhibit 373?

The Court: That was read just a short while ago. That is what the letter stated. It does not do any good to ask the doctor about it. The letter itself shows what it says.

By Mr. Kelleher:

Q. As a matter of fact, then, Dr. Selders was denied privileges because he was not a member of the local medical society?

A. One reason, yes, sir.

Q. And the only reason given in the minutes and in the letter to him.

A. That may be.

Q. You knew, did you not, that Dr. Selders was a member of the Harris County Medical Society and of the American Medical Association?

A. I saw that in his application, yes.

Q. You saw that in his application?

A. Yes.

Q. Will you identify this as the minutes of the meeting of October 14, 1937, of the executive staff? It is a photostatic copy. Can you identify this as the minutes of that meeting?

A. Yes.

Gov. Ex. 664 was received in evidence (last paragraph only) and read to the jury as follows:

Gov. Ex. 664 is a photostatic copy of the minutes of the regular meeting of the executive staff of Emergency Hospital, held on October 14, 1937. From these minutes I read the following:

"Attention of the staff was called to the matter that occasionally an applicant for courtesy privileges will be a member of his local medical society, but not of the District Medical Society. It was ruled that ordinarily this would meet the requirement of the hospital that a man be a member of the District Medical Society."

By Mr. Kelleher:

Q. Dr. Mitchell, as a matter of fact, with respect to Dr. Selders' application, this interpretation adopted on October 14, 1937 was not applied, was it?

A. I beg your pardon; of the local medical society?

Q. The interpretation put on that regulation of Emergency at the meeting of October 14, 1937, that membership in another local medical society of the AMA would ordinarily be sufficient.

A. Isn't it in his own local medical society, or is it another one?

Q. "It was ruled that ordinarily this would meet the requirement of the hospital that a man be a member of the District Medical Society."

A. That is local.

Q. Wasn't Dr. Selders a member of the Harris County Medical Society?

A. No, he was practicing in Washington.

Q. Wasn't that his local medical society?

A. It had been; it wasn't then.

Q. As a matter of fact, then—

A. (Interposing) We understood he had been expelled from his local society.

Q. When did you understand that?

A. At the time of his application.

Q. In December, 1937?

A. Well, now, the date I cannot tell you, sir.

Q. What led you to believe that as of that time he was expelled from the Harris County Medical Society?

A. I cannot tell you the date, but I know when we were considering him he was expelled from his local society.

Q. If, as a matter of fact, he had not been expelled from his local society, he would have been eligible?

A. His local society when he was practicing in the District was the District Medical Society.

Q. As a matter of fact, Emergency Hospital did not require that all applicants be members of the Medical Society of the District of Columbia?

A. Yes, of the local society of the district in which he was practicing at the time. We have men in Virginia, for instance, who are members there.

Q. [illegible]at, Doctor—

Mr. Leahy: Let him finish.

By Mr. Kelleher:

Q. I did not mean to interrupt you. Have you finished, Doctor?

A. I was not through.

Q. Finish your answer.

A. We have men in Virginia—neighboring Virginia—and neighboring Maryland who do not belong to the District Society but do belong to the local societies in the districts in which they are practicing.

Q. Do you permit them to practice in Emergency Hospital?

A. We let them come to Emergency Hospital.

Q. Isn't it also true that as late as June of 1938 there were members of the staff of Emergency Hospital who were not members of the local medical society?

A. Not on the staff; they may have been courtesy; but I don't know, as I explained before.

Q. I show you Gov. Ex. 472 and ask you to see whether it refreshes your recollection of whether or not as of that

date there were members of the courtesy staff who were not members of the local society.

A. Yes.

Q. Does not help you refresh your recollection?

A. I see that, yes.

Q. It is true, then, that as late as June of 1938 there were on the staff of Emergency Hospital—on the courtesy staff—

A. (Interposing) On the courtesy list.

Q. (Continuing)—doctors who were not members of the local society?

A. Quite probably, yes, but were members of their local societies in the neighborhood.

DR. A. MAGRUDER MACDONALD, a witness for the Defendants.

Direct examination.

By Mr. Leahy.

I reside in Washington. I have been a practicing physician in the District since 1915, when I graduated from Georgetown University Medical School; I interned at Emergency Hospital and was resident physician there for a period of two years; subsequently I was superintendent of Casualty Hospital for a year, then I went into the service and was abroad, first with the British Army and then with the American Army; on returning to the United States I remained in service at Camp Lee and on my discharge entered into the practice of medicine in Washington. I have been Coroner of the District of Columbia since 1934, and deputy coroner prior thereto since 1920; earlier I had been doing autopsies and post mortems in the District Coroner's office; I am on the council at Sibley Hospital, on the staff at Casualty, and I have courtesy provileges of treating patients in other hospitals in the city. My appointment at Silbey occurred in March, 1937. I am associate in surgery at Casualty. In 1937 at Casualty I was on the interne committee and in 1938 I was on the credentials committee. The functions of the credentials committee were to review the credentials of any individual applying for admission with the privileges of treating patients in the institution.

While I was on the credentials committee at Casualty an application of Dr. Selders came before my committee

for investigation and report. This happened in June, 1938. Certain letters and statements concerning Dr. Selders were presented to me for my consideration. I passed on this material and made a recommendation as to what those qualifications indicated, and recommended against granting privileges to Dr. Selders at Casualty. I saw letters from the Worcester City Hospital at Worcester, Massachusetts, and from Dr. J. C. Alexander, of Houston, Texas, and a third from the University of Pennsylvania.

Defense counsel read to the jury as follows:

Letter dated April 25, 1938, from the Worcester City Hospital, over the signature of George A. MacIver, addressed to Miss E. M. Rogers, Superintendent of Casualty Hospital (Gov. Ex. 666):

"DEAR MISS ROGERS:

Dr. Raymond E. Selders served as surgical resident in this hospital for one year ending June 30, 1937, coming to us highly recommended from the Post-Graduate School of the University of Pennsylvania.

He participated in the surgical work of the hospital considerably and had an opportunity to gain considerable competence. Our operating schedules show that 203 cases were assigned to him for operation. This does not mean, however, that he actually performed these operations. He may have elected to assist in some of them. There is record that he actually performed and dictated 133 operations, 105 of which were classified as major. From the above I think you can conclude that his surgical training is such as to give him competence.

Yours very truly, George A. MacIver, Superintendent."

This is the letter of April 28, 1938, from Dr. J. C. Alexander, in the Shell Building, at Houston, Texas (Gov. Ex. 668):

"DEAR MR. ROGERS:

In reply to your letter regarding the qualifications of Dr. Raymond E. Selders, I beg to advise that his professional qualifications in surgery are well above the average and ethically and morally he has always been above re-

proach. During his several years of practice here he made many valuable lay and professional friends.

He is now a member of the Harris County Medical Society here.

Yours truly, J. C. Alexander."

Letter is a copy of an original on the letterhead of the University of Pennsylvania Graduate School of Medicine. It is addressed to the superintendent of Casualty Hospital and dated April 27, 1938 (Gov. Ex. 667):

"Dear Mr. Rogers:

Dr. Raymond E. Selders was a student in the surgical group of the Graduate School of the University of Pennsylvania during 1935-1936, and he completed this basic year satisfactorily. He then went to Worcester, Mass., and spent a year in clinical training, and I understand that his work there was satisfactory to his preceptor.

Personally, I know nothing about his ability as a surgeon beyond this basic training which he had in Philadelphia, and I am sure you have a full account of his training before he came here. This training, according to his records, was broad, and he is a man of mature age and general experience.

Very truly yours, Walter Estell Lee."

During the discussion pertaining to Dr. Selders' qualifications, Dr. Caylor, who was on that committee and who was connected with Providence Hospital, stated that the matter had been referred to the Washington Academy of Surgery and that they had obtained an adverse report on Dr. Selders. From my observation of the letters received concerning Dr. Selders it is my opinion that Dr. Selders should have had more actual contact with patients and responsibilities before he went out into general surgery, and that he should serve an apprenticeship with some other surgeon for a period of time.

As a member of the council at Sibley Hospital I was assigned to three committees: the committee on surgery, the committee on X-ray, and the committee on laboratories, and as a member of the council I assisted in the investigation there into the qualifications of Dr. Selders. In Sibley Hospital when an individual applies for courtesy privileges a form is sent to us which has a notice on it that a certain person has applied for courtesy privileges in certain fields,

and that certain information is in the office. I received such a notation in November, 1937, concerning Dr. Selders, and my notation was this: "Not approved—need more information," because there was nothing except the application of the individual in the file, and I knew nobody of whom I could inquire who had seen this man perform any operations. It was not my particular duty to seek out information, and in referring the matter back to the hospital for more information it was the hospital's duty to supply me and each individual member of the committee with more information, and to my recollection this case was never referred back to me after I put in my original paper. At the time of passing upon the qualifications of Dr. Selders I stated that in view of certain controversies that had existed over a period of months concerning Group Health that those things should be discarded from our minds and that we should consider this application from the information at hand and the discussion of the credentials committee concerned his qualifications and experience.

The recommendation of the committee I was on went to the staff, and then from the staff to the board of directors. On the notice I received it was noted that the individual was an employee of Group Health, but having no information concerning Group Health that didn't enter into my mind at the particular time, because I wanted information so I could pass on him in justice to the man and to myself.

Cross-examination.

By Mr. Lewin:

When Dr. Selders' application was again submitted at Sibley I wasn't a member of the Executive Committee and the matter was not referred to me. All I can say concerning Dr. Selders is this: that in the folder concerning him was the application and no other correspondence. Report dated November 27, 1937, by Sibley Hospital on Dr. Selders, was marked Gov. Ex. 665 and offered by Government and received in evidence and read to the jury as follows:

"Applicant's credentials on file in the office of the President.

"Attention of the committee is called to the fact that above applicant is one of the salaried physicians of the Home Owners' Loan Corporation Group Health Associa-

tion and that information as to his qualifications and correspondence in connection with his application will be found on file in the president's office available to members of the various committees concerned for their information."

When I considered Dr. Seiders' application at Casualty in June, 1938 I did not go back to see what his references were at Sibley. I never saw the responses from his references at Sibley.

Dr. James A. Cahill, a witness for the Defendants.

Direct examination.

By Mr. Leahy.

I reside in Washington. I am a practicing physician here, graduated from Georgetown University Medical School in 1915; then I was in St. Elizabeth's Hospital, Youngstown, Ohio; Providence Hospital, Washington, D. C.; Georgetown University Hospital, in Washington; and I was in the Army for two years. I am a Fellow of the American College of Surgeons and a member of the Washington Academy of Surgery and the District Medical Society. I am chief surgeon at Georgetown University Hospital, chief surgeon at Providence Hospital, consulting surgeon at Gallinger Hospital, consulting surgeon at Columbia Hospital, and professor of surgery at Georgetown University School of Medicine. I held all these positions on the hospitals during the years 1937 and 1938 and still hold them.

In 1937 there came a time when I wished to establish a residency in surgery at both Georgetown and Providence Hospitals, and I wrote a letter to Dr. William Cutter in Chicago, head of the Committee on Medical Education of the American Medical Association, requesting an inspector. I asked Dr. Cutter (Def. Ex. 16) to inspect both Georgetown University Hospital and Providence Hospital with reference to approving a residency in surgery at both institutions.

At the time I made this request I had never heard of Group Health, as the request went along in January of 1937. Dr. Peterson was sent by Dr. Cutter and investigated and made an inspection of both Providence and Georgetown Hospitals. I discussed the matter with Dr. Peterson. My discussions had nothing whatsoever to do with Group

Health. I don't know of the Mundt Resolution as such, but I have heard there was such a resolution.

There came a time when Dr. Peterson made a report of what he found on the inspection of the two hospitals. In the letter transmitting the report there was a suggestion made that members of the staff at Providence and Georgetown should become or were asked to become members of the local Medical Society. I am on the surgical staffs of both Providence and Georgetown Hospitals. The reports from Dr. Peterson came under the consideration of the surgical staffs and the general staffs of both hospitals.

There was absolutely no threat, no coercion, and no duress with reference to the suggestion that members of the staffs become members of the local Medical Society. I was present at the staff meetings when this suggestion concerning membership was discussed. The staffs considered that they were willing to cooperate in helping to make the hospitals better and did not consider the suggestion a threat.

Georgetown Hospital was approved first for residency in surgery. Providence Hospital was asked to make certain changes for the betterment of the institution, and then it was approved for residency in surgery. At Georgetown a rule was adopted asking members of the staffs to become members of the District Medical Society, and a similar rule was adopted at Providence, but all the members of the courtesy staff at Providence Hospital are not members of the local society. There are members on the staff now and there were members on the staff then, at the time of the inspection, that are not and were not then members of the local Medical Society or the AMA. That is also true with reference to Georgetown.

At Providence I never saw a questionnaire from the hospital committee of the local society, nor did I see such a questionnaire at Georgetown. The so-called Mundt Resolution has never been used either at Georgetown or at Providence against anybody on the staff. The Mundt Resolution as adopted by Georgetown and Providence had nothing whatsoever to do with Group Health or members of the staff of Group Health. In adopting the principle of the Mundt Resolution the staffs at the hospitals believed that members of the local society should be members in the practice of medicine who were interested in advancing the betterment of the hospital, so that patients could be treated better and

so that advancements in science could be recognized when they were brought in.

Cross-examination.

By Mr. Lewin:

Sometime after the receipt of Dr. Cutter's letters Georgetown Hospital and Providence Hospital for the first time required membership in the District Medical Society for its courtesy staff. Dr. Caylor sent the provisions of the resolution to the members of the staff, not as a requirement but as a suggestion. At Georgetown the same suggestion was adopted in the late fall of 1937, and the same type of letter was sent to the staff.

DR. CLAUDE C. CAYLOR, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I sent a letter to the members of the staff at Providence under the direction of the medical staff simply to notify the men of the recommendation of the AMA that all members of our staff should belong to the AMA or one of its constituent bodies (Gov. Ex. 501). On receiving the instructions from the staff no instructions were given as to the form of the letter or the words to be used, and that was left to my discretion. After sending out the letter I never did anything further toward checking up. As I recall, I sent the letter to six doctors, and each of them spoke to me personally; and, while I don't know as a matter of fact, my impression was that they all joined the Medical Society. We have members on the staff at Providence who are not members of the local Medical Society. I never thought of the recommendation of the AMA as a threat or a form of coercion against Providence Hospital.

Cross-examination:

I am secretary of the executive staff. I signed the minutes of the meeting of the executive staff at Providence on February 17, 1938, and those minutes show that after my letter was sent out I was able to note general compliance

with the recommendation of the AMA on the part of the doctors on the Providence staff.

SISTER ROSA, a witness for the defendants (of Providence Hospital).

Direct examination.

By Mr. Leahy:

I am superintendent of Providence Hospital and have been for four years. Before coming to Providence I was protectress at the Mother House at Emmittsburg, Maryland. On coming to Providence I supervised the entire hospital in all departments.

I recall that there came a time when I wanted a residency in surgery approved at Providence Hospital. I think Dr. Caylor took the matter up. I recall that there came a time when an inspection was made of the hospital by representatives of the AMA. I remember that a Dr. Peterson was there at the hospital. Providence has had inspections made of it quite frequently. We had an inspection to give us permission to train residents, we had inspections of our school of nursing twice a year from New York State and the District, and we have inspections by the College of Surgeons and the AMA. The purpose of the inspections which are made by the AMA is to raise our standards. I requested them to come, so that I could know wherein we were making mistakes in regard to training internes, as we were then trying to raise our standards for the training of residents, including residents in surgery. We finally got the privilege or approval in 1939, I think.

After the inspection was made of the hospital a report came to me of what the inspector found (Def. Ex. 23). I read it over several times, and then I wrote a letter dated August 27, 1937, when I was acting superintendent of the hospital (Gov. Ex. 240).

I do not remember the letter of Dr. Peterson or Cutter which accompanied the report of inspection made at Providence Hospital (Gov. Ex. 239). I recognize the letter dated October 12, 1937, to Dr. Cutter, of the Council on Medical Education and Hospitals (Gov. Ex. 241), as a letter Dr. Caylor or some of the doctors wrote, and, if I am not mis-

taken, asked me to sign, and I signed it. I read it and they asked me to sign it to verify what the hospital thought in regard to this matter; that I represented the hospital, and that if I put my name here (indicating) it would verify the statements made in it. I did so sign and verify it after reading the letter.

I invited these men, at the time I have reference to, to come because I was most anxious to train residents, and these men were anxious for it, and I was backing them up, and I wrote it for them to give us constructive criticism, and that is what I considered it. I did not consider it coercion or threat or anything of that kind, any more than when the District Nursing Board examines us and makes recommendations.

We always try to carry recommendations out 100 per cent, but I do not consider them a threat, because some of them we can't carry out very well. We try to do the best we can.

Nothing that I did in connection with meeting the requirements or recommendations of any report or any suggestion which was made by Dr. Peterson or the American Medical Association had anything whatsoever to do with Group Health.

I remember that a Dr. Selders made an application for privileges at Providence Hospital. It was sent by us to the Washington Academy of Surgery, and a recommendation was received back from the Academy. Dr. Valentine Hess was our medical director at that time. The letter to Dr. Hess, dated January 31, 1938, Gov. Ex. 448, states that the Committee on Hospital Privileges of the Washington Academy of Surgery recommends disapproval of the applications of three physicians, one of them being Dr. Raymond E. Selders, to do major surgery at Providence Hospital.

After the witness left the stand the Government read two excerpts from the letter dated August 21, 1937, from Dr. Cutter to Sister Margaret (Gov. Ex. 239) as follows:

It is dated August 21, 1937, from Dr. Cutter to Sister Margaret, Superintendent of Providence Hospital. I will simply read this sentence from it (reading):

"As matters stand now we believe quite likely that when this statement is submitted to the Council at its regular meeting early in November interneship approval will be withdrawn. Similarly the application for approval of a

residency in surgery is held in abeyance pending the adjustment of the present situation."

Then:

"We also append for your information a resolution of our House of Delegates of the American Medical Association."

Then follows the Mundt Resolution, and then:

"According to our analysis there are six members of your staff who are not affiliated with any of the constituent societies of the A.M.A."

The Court: Call your next witness.
Mr. Leahy: May I call attention to a paragraph there?
The Court: Yes.
Mr. Leahy (reading):

"You will recognize that there are several factors that are not in conformity with the Council's regulations governing internship approval. It is a matter of great interest to this office, therefore, to learn whether the recommendations enumerated at the end of the report are acceptable or not.

Then follows the sentence beginning "As matters stand now," which was just read by Mr. Lewin.

DR. DANIEL L. BORDEN, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I reside in the city of Washington. I am a practicing physician here in the city. I graduated from George Washington University, doctor of medicine, in 1912. I was in Columbia University for a period of three years, then at George Washington University Hospital. I received training under the immediate supervision of my father, who was a surgeon before me. After that I went into the Service in 1917; I was in the Service for over two years. I am chairman and senior operating surgeon of the Board of Police and Fire Physicians of the District. I am a member

of the District Medical Society and the Washington Academy of Surgeons and was one of the Academy's founders. The Academy of Surgery was founded by a group of surgeons in Washington, with the thought of maintaining and increasing the general prestige and standards of the practice of surgery in the District of Columbia. During 1937 and 1938 I was a member of the credentials committee of the Academy.

As far back as 1935 the Academy discussed the question of some type of standards committee to examine applicants for surgery in the various Washington hospitals, and in 1936 this was started as a committee, and I was appointed to that committee and remained on that committee until I became president of the Academy in 1938.

The credentials committee is composed of five men elected originally by the Academy, and in recent years they are elected or appointed by the president. The functions of this committee are to review all applicants for surgical privileges in the various Washington hospitals; that is, such hospitals that are to submit applicants' applications for the Academy for an opinion. This opinion is an advisory one only. All applicants are required to fill out an application blank giving all of their qualifications. Then in addition they must have on that blank the names of at least three sponsors, men who will go on record in writing as stating that the applicant is capable of doing general surgery.

An application of Dr. Raymond E. Selders came before the credentials committee of the Academy for investigation. The first time I heard of it was at a meeting at Dr. John Lyons' office. He was then chairman of the credentials committee, and the name of Selders was presented to the committee. At that time we had nothing except his application blank, which was read and referred to Dr. Fred Sanderson for an investigation. The following month, January, 1938, Dr. Fred Sanderson reported to the committee his findings.

It is the habit or custom for the chairman of the credentials committee to investigate most of the applicants, but John Lyons and I on the particular occasion were planning to go down to a meeting of the Southern Surgical Association, so Dr. Sanderson was asked by Dr. Lyons at the meeting to investigate the qualifications of Dr. Selders.

After about a month's time a report was made back by Dr. Sanderson to the credentials committee. The committee was composed of Dr. Lyons, Dr. Sanderson, Dr. Paul Putzki, Dr. Arch Riddick, and myself.

The six men named in Gov. Ex. 445-A came to the attention of the credentials committee on December 8, 1937. In January, Def. Ex. 44 came before us for consideration. The three names given by Dr. Selders on his application as sponsors were: Dr. Walter E. Lee, a Dr. Moore in Texas, and some Senator's name that I don't remember.

I identify a carbon copy of a letter dated January 12, 1938, to Dr. John D. Moore, Hugo, Oklahoma, from Fred R. Sanderson, M. D., Def. Ex. 54, and a letter dated December 16, 1937, to Dr. Frederick Sanderson from Dr. Walter Estell Lee, Def. Ex. 44, as being before our committee on credentials.

Def. Ex. 44 was received in evidence and read to the jury, as follows:

"In reply to your inquiry about Dr. Raymond E. Selders, he is a mature man and has had a very varied experience. He is an accomplished musician, a graduate in civil engineering and several other professions, and he studied medicine quite late in life. While in the southwest he practiced medicine and surgery and then finally entered the Graduate School of the University of Pennsylvania two years ago, spending one year in the basic science course in Philadelphia, and one year in clinical work at Worcester, Massachusetts. At Worcester they apparently gave him unusual opportunities, far beyond what we considered his training warranted. However, he seemed to get away with it, and the last I heard of him was the fact that he had made application for this position of surgeon to the Home Owners Loan Medical Service.

"I do not know just what he is aspiring to in Washington and I hope this outline that I have given will answer your purpose.

"Very truly yours, Walter Estell Lee."

Def. Ex. 54 was received in evidence and read to the jury, as follows:

"January 12, 1938.

Dr. John D. Moore,
Hugo, Oklahoma.

DEAR DR. MOORE:

On December 6, 1937, last I wrote you requesting some information concerning the surgical training and ability of Dr. Raymond Selders, Houston, Texas, who has applied for hospital privileges in several Washington hospitals. As yet I have had no reply from you and would appreciate it very much if you would kindly forward me the information I ask.

Very truly yours, Fred R. Sanderson, M. D."

Fred is the first name of Dr. Fishback of the Washington Academy of Surgery, and I think that his signature is on Gov. Ex. 446-A and "Dear John" refers to Dr. John Lyons, the chairman.

The last paragraph of Gov. Ex. 446-A was read to the jury by Mr. Leahy, as follows:

"I am anxious to talk to you before you reach any decision on Dr. Selders, especially if there is feeling that he will be disapproved purely because of his connection here in Washington. As a matter of policy and tact, and I believe for the good of general public attitude toward the profession, the question of his relationship to the Group Health Association, Inc., should not be permitted to enter the discussion."

In passing upon the qualifications of Dr. Selders for hospital privileges the credentials committee of the Academy depended entirely upon the qualifications of the man to do general surgery, in making its final judgment. In disapproving the qualifications of Dr. Selders the Group Health situation was purposely kept out of the whole question, and I was willing to divorce any such thought out of my mind in passing on a man's qualifications to do general surgery.

The contents of Dr. Lee's letter were considered by the credentials committee. We doctors at that committee meeting talked very plainly, as we sensed our responsibility rather keenly, and we felt, to put it in common language that a letter submitted to us as the only written evidence that we had to go on other than that submitted by Dr. Selders

himself really damned him with faint praise. That is my interpretation of the Dr. Lee letter. The committee's action was unanimous against giving Dr. Selders general surgical privileges.

Cross examination.

By Mr. Lewin:

I was appointed in 1936 to the Executive Committee of the Medical Society and remained through 1938. I attended a great many meetings of the Executive Committee, in fact most of them, and I was familiar with most of the actions of the Executive Committee. On September 27 both the Medical Society and I took the position that Group Health was unethical and was violating the principles of medical ethics of the AMA. Drs. Lyons, Sanderson, Putzki, and Riddick were members of the Medical Society.

In passing on the application of Dr. Selders we did not follow the motion of Dr. Sager passed at the December 10, 1937, meeting of the Council of the Washington Academy of Surgery (Gov. Ex. 444-A), which states that in passing on requests for hospital privileges the committee should consider the ethics of the applicant as well as his strictly surgical training and experience. That particular resolution was brought to my attention this way: At the scientific meetings of the Academy, which are held four times a year, after scientific meeting we have a business session and take up various matters of interest in a business way. It is my recollection that Dr. Fishback brought up the question of Group Health at that time, and then Dr. Sager, in accordance with the statement in those minutes, passed or offered a resolution that the credentials committee of the Academy in passing upon the qualifications of surgeons should consider their ethical standing in any organization as well as their professional ability to do general surgery.

Now, that occurred in the early part of December. The meeting of our committee in which we passed upon this Dr. Selders occurred in January, but, in accordance with my former statement, we divorced everything in passing judgment on this man, and at the same time passed the same judgment on five other men not associated with Group Health, adversely. So far as I know, Dr. Sager's resolution was passed during a discussion of Group Health.

We have always regarded the ethics of the American Medical Association as our background and by-laws, but in passing upon men to do general surgery we had to go a step further, and that was to ascertain whether they were safe to operate on the public. My recollection is definitely and honestly that I—and I am sure the committee did—passed entirely on this man's qualifications as a surgeon. At the last meeting I attended, because then I became president and automatically left the committee on credentials, my memory is that we had one application blank on which appeared the three names I gave, and that's the only one I know of. I don't remember the hospital, but my feeling is it was Garfield, but I'm not sure. It has been our custom since the committee was formed simply to take the evidence submitted by the applicant. Dr. Sanderson investigated these names, and we had before us just one letter from Walter Lee and Dr. Sanderson's second letter to Dr. Moore, together with the application blank. As the committee is composed of five surgeons, fairly busy men, who get no compensation, we don't go beyond our immediate meeting and did not go to the Worcester City Hospital or Houston or any of the places mentioned in Dr. Selder's application to investigate it. We members of the committee expected to be supplied with the material, and then we will investigate it, but we have never, as a matter of custom, ever gone outside of our own committee.

The committee represents a group of hospitals. It doesn't represent one hospital. And I think that does away with the possibility of possible bias, for we are trying to make it as standard as possible, as a matter of fairness and protection to the public and ourselves. We doctors circulate in every operating room in this city, and for that reason we rather feel that we honestly have an opportunity to know as much as possible; but here we were dealing with a stranger, a man who was not a Washington man at all, so our problem was much more difficult. We didn't get any response from Dr. Moore after two attempts.

Q. Well, now, let me see that letter that you read in evidence a moment ago, will you? The one to Dr. Moore. Let me show you Dr. Lyon's letter to the Secretary. Doesn't Def. Ex. 54 show that he wrote to Dr. John D. Moore at Hugo, Oklahoma?

A. Well, that is what that letter says.

Q. Well, now, if he wrote to Dr. John D. Moore at Hugo, Oklahoma, and doesn't it also appear upon Def. Ex. 54, which was just read to the jury, "Dr. John D. Moore," of Hugo, Oklahoma?

A. Yes, sir.

Q. Well, now, if that is where the letter went, don't you think that might account for the fact that you didn't get an answer from Dr. Moore?

A. I think that might.

Mr. Leahy: Are you sure you are showing him the right application? See if there is not another application with "John D. Moore" of Hugo, Oklahoma on it.

Mr. Richardson: In your files. See if you have not got one there.

Mr. Lewin: I have got the Garfield one which he says was before him.

Mr. Richardson: But you have an application there which says "John D. Moore."

Mr. Kelleher: Will you tell us which one it is?

Mr. Lewin: Will you tell us which one it is?

Mr. Richardson: One of the hospitals.

Mr. Kelleher: We don't know.

Mr. Richardson: All of the applications.

By Mr. Lewin:

Q. This Garfield application shows "John T. Moore" of Houston, Texas, doesn't it, past president of the Medical Association of Texas?

A. John——

Q. —T. Moore.

A. Is that "T"? Yes. "John T. Moore, past president."

Q. "Houston, Texas"?

A. Yes.

Q. This application of George Washington shows "Dr. John T. Moore, past president, Texas State Medical Association, of Houston, Texas," doesn't it?

A. That is right.

Q. What?

A. That is right.

Q. It also shows "Dr. George MacIver of the Worcester City Hospital." Did that come to your attention?

A. No, sir.

Q. At any time?

A. I never heard of that.

Q. Weren't you on the staff of George Washington yourself?

A. Yes, sir.

Q. You never saw this application?

A. No, sir.

Q. Of Dr. Selders?

A. I am not on the executive staff.

Q. Didn't his Garfield application show that he had been a resident in surgery at the Worcester City Hospital?

A. Yes, sir.

Q. But did you write to the Worcester City Hospital or to the superintendent of it?

A. I didn't write to anyone. I thought I made that quite clear.

Q. Did Sanderson?

A. Dr. Sanderson——

Q. Did Sanderson?

A. Well, I am sure I don't know, but I am sure my memory is that the only written documentary evidence that he produced that we passed judgment on were the written statements that I have stated before.

Q. All right. Now, here is Dr. Selders' application to Georgetown University Hospital, and I believe your committee passed on that application, didn't it?

A. Well, the only one that I personally have any recollection of was the one that gave those three names. Now, they may have all been similar, so far as I know.

Q. Well, yes. I wonder if this does not refresh your recollection that here Dr. John T. Moore, past president of Texas State Medical Association, Houston, Texas, is given; the same Dr. Walter E. Lee of Philadelphia; Dr. MacIver, the superintendent of the Worcester City Hospital; Dr. C. J. Burn, the senior surgeon at Worcester City Hospital?

A. I never heard of those last two doctors.

Q. And you don't remember that Dr. Sanderson could give any report on what they said about Dr. Selders?

A. I am sure that Dr. Sanderson, as far as my memory goes, and it's pretty good—I think that those are the only written documents at that time that we had before us.

Mr. Lewin: Now, gentlemen, have you found the one of Dr. Moore of Hugo?

Mr. Burke: The one that has Senator Josh Lee's name on.

Mr. Lewin: Let us give it to the jury. There is a "Josh." That is the Garfield.

Redirect examination:

At the time we passed on Dr. Selders' qualifications, as a matter of fact, we passed on the qualifications of at least 60 or 70 doctors, but we refused privileges or recommended the refusal of privileges of five besides Dr. Selders, making a total of six at that particular meeting. At least four of the disapproved doctors were members of the Medical Society. The fact that the members of our committee were members of the District Society was not even thought of by the committee in passing upon applications.

I now have a letter of transmittal requesting a report on the qualifications of Dr. Selders, enclosing a copy of his application to Columbia Hospital for Women. The letter is dated November 26, 1937, marked Def. Ex. 55. The copy of the application of Dr. Selders to Columbia Hospital for Women is dated November 10, 1937, marked Def. Ex. 56.

Def. Ex. 55 was received in evidence and read to the jury, as follows:

"Washington Academy of Surgery, Care of Dr. H. H. Kerr, 1744 N. St., N. W.

GENTLEMEN:

I am directed by the Medical Board of this hospital to request your cooperation and advice, as proffered some time ago, in the matter of an application for courtesy privileges in major gynecological surgery and operative obstetrics.

Dr. Raymond E. Selders, an employee of the medical cooperative or insurance organization recently formed by employees of the Home Owners Loan Corporation, is applying for such privileges and, as you can see by the enclosed copy of his application, he has not presented evidence of the high degree of training and large experience in gynecology and obstetrics which this hospital has usually demanded of those seeking privileges in Classes 1 and 2, although he may have had both.

Because of the peculiar circumstances of this case and the Medical Board's desire to act in a fair and judicial manner, your advice will be greatly appreciated.

Very truly yours, P. M. Ashburn, M. D., Secretary of the Medical Board."

Def. Ex. 56 was received in evidence and read from to the jury as follows:

"Give name of Medical Board or Courtesy Staff physician for reference.

"Walter E. Lee, M. D., Surgeon—Philadelphia. John D. Moore, Past President, Medical Association of Texas."

I got the address of John D. Moore as being Hugo, Oklahoma, from Dr. Sanderson.

Recross-examination:

Q. Doctor, when you were on the stand before, you testified that you and your committee of the Washington Academy had before you the application of Dr. Selders to Garfield Hospital.

A. I testified to the best of my memory that; I was not sure.

Q. What is your testimony now that you have the application to Garfield Hospital before you?

A. The day I testified?

Q. No. When you were passing on the qualifications of Dr. Selders.

A. I think the record will bear me out that I stated that I did not know what——

Mr. Lewin: I move that that be stricken.

Q. I want an answer to my question, Dr. Borden. Did you have the application of Dr. Selders to Garfield before you when your committee passed upon his qualifications?

A. My recollection now is certain about it since I have this. This is the one we had (indicating Def. Ex. 56).

Q. Did you have the application to Garfield before you at any time while you were passing on Dr. Selders' application?

A. Not at the last meeting I did not have.

Q. Did you have it in any of the meetings that you attended?

A. Not to my knowledge.

Q. Would you deny that you had the application that Dr. Selders sent to Garfield and to Georgetown, Providence, and George Washington at any time while you were deliberating upon his qualifications?

A. I would not deny or affirm anything, because it did not come to mind. But it is my impression that we passed on the application that I brought in this morning (Def. Ex. 56), and that any future correspondence with other hospitals involved was the result of the action we took on this.

Q. So your best recollection would be that this was the first one that you had, and then as the later ones came in you gave them the answer which had resulted from your investigation of this one. Is that it?

A. I am in no position to say, because I was not chairman of the board. I can only say that we took action on that application, and that all future applications went through the chairman of the board.

Q. Is it not true, however, that after you considered this application you later got applications from Garfield, Georgetown, Providence and George Washington University hospitals?

Mr. Leahy: Do you mean him, personally?

Mr. Lewin: I mean, his committee.

A. I explained to you the last meeting I attended, because I became president in January, and I saw no other application after that date.

By Mr. Lewin:

Q. Did you participate in the decision upon which Dr. Fishback's letter of January 31 was based, to Garfield?

A. The only letter that I remember from Dr. Fishback was the one we discussed the last time.

Q. It is in evidence that Dr. Fishback wrote Garfield Hospital on January 31 giving the Washington Academy's conclusion as to Dr. Selders' qualifications to that hospital. Did you participate in the deliberations of the committee that led up to the sending of that letter?

A. Dr. Fishback was the secretary of the Academy.

Q. Dr. Borden, I would like to have an answer to my question. Did you participate in the deliberations of the committee that led up to the letter which Dr. Fishback sent to Garfield Hospital?

A. To my knowledge, I had no thought about the matter at all.

Q. You do not remember; is that your answer?

A. Well, I have got a pretty good memory, but I do not think, beyond passing on the applications we had, so far as I was concerned with them in every committee meeting as long as I was on the committee——

The Court: We do not want to go into another cross-examination of this witness except on the testimony of this morning.

Mr. Lewin: I am confining it to that, I think, your Honor.

By Mr. Lewin:

Q. Is not Def. Ex. 56 a copy of a document prepared at Columbia Hospital?

A. Yes, sir.

Q. It is not a document prepared by Dr. Selders, is it?

A. No, sir.

Q. It is only a copy, is it not?

A. Yes.

Q. Do you know where the original is?

A. I suppose it is at Columbia Hospital.

Q. Do you know who prepared it?

A. Who prepared the copy?

Q. Yes.

A. Whoever wrote that letter. It came with the accompanying letter.

Q. It is true that Hugo, Oklahoma, does not appear on here, is it not?

A. There is no address on there at all; just the doctor's name.

Q. But it does appear on there that he, Moore, was Past President of the Association of Texas, does it not?

A. Yes, sir.

Q. And the letters which Dr. Sanderson sent to this Dr. Moore were sent to Hugo, Oklahoma; is not that correct?

A. Yes.

Q. And you did not receive any reply?

A. Dr. Sanderson did not; no.

Q. And the committee did not?

A. No.

HENRY B. BLAIR, a Witness for the Defendants.

Direction examination.

By Mr. Leahy:

I reside in Washington. I am a member of the bar of this Court, of the Court of Appeals, and of the Supreme Court of the United States. I have been a member of the bar of this Court since 1892. I was one of the incorporators of the Episcopal Eye, Ear, Nose and Throat Hospital in 1897 and have been connected with that institution since. I was its first vice-president, which is the active member of the hospital from the executive side; the Bishop of the Diocese being, ex officio, the president, and I was also chairman of its executive committee. In 1937 and 1938 I was on the executive committee and one of the directors at Columbia Hospital.

In the Episcopal Hospital the governing body is the board of governors, which meets three times a year. The active body is the executive committee, which is appointed by the board of governors.

In Columbia Hospital the setup is somewhat the same, except that the board is called directors and meet four times a year, and the executive committee meets monthly.

The Episcopal Hospital is a special hospital, as its name implies, and Columbia is a special hospital for lying-in and diseases of women. Episcopal has an attending staff and a courtesy staff. The medical staff makes recommendations annually to the board of governors, and the board of governors approves those recommendations unless there is some question raised in regard to them. In other words, it is a requisite at the Episcopal Hospital that one must belong either to the attending or courtesy staff before he can practice his profession there, and that rule has existed during the existence of the hospital. During the years 1937 and 1938 I did not understand that there was any by-law in Episcopal Hospital requiring membership in the local Medical Society as a prerequisite to practicing in the hospital.

I know Dr. Dabney. In 1937 and 1938 he was continuously one of the chief surgeons during that time, which means that he was a chief of staff, one of 12. I have no knowledge of any rule or regulation of Episcopal against Group Health patients coming into the hospital. There was

no rule at the hospital that made it necessary for Dr. Dabney to bring Group Health patients through the back door of the hospital.

In 1937 and 1938 I am sure that Columbia Hospital did not put into effect any rule requiring membership in the local Medical Society as a prerequisite to the enjoyment of hospital privileges. I do not recall that any rule or regulation was put into effect at Columbia Hospital against Group Health. I do not know whether there were any members on the staffs at Episcopal and Columbia Hospitals in 1937 and 1938 who were not members of the District Society. I think not, but I do not know.

Cross-examination.

By Mr. Lewin:

I have none of the by-laws with me, as we furnished everything we had to the Government. The medical staff at Episcopal has its own by-laws.

I was chairman of the executive committee of Episcopal Hospital in September, 1938. The statement in the minutes of the executive committee of September 20, 1937, that "The chairman informed the committee that he had received during the summer several communications regarding Group Health Association and that we would go along on the present basis until the matter had been finally adjusted between the doctors and Group Health Association," is substantially my statment, but in the language of the secretary pro tem. the word "doctors" in that phrase, "adjusted between the doctors and Group Health Association," means our own doctors at Episcopal.

My information is that the by-law of the Medical Staff relating to confining the courtesy list to members of the local Society was not a requirement in 1937 and 1938, and I can't furnish you with the by-laws because I have furnished you with everything that we have. The subpoena did not call for these by-laws.

Charles D. Drayton, a Witness for the Defendants.

Direct Examination.

By Mr. Leahy:

I am a member of the bar of this Court and have been a member for about 35 years, as well as a member of the

Court of Appeals and the Supreme Court of the United States. I am a member of the Board of Education of the District of Columbia. I have been a director of Children's Hospital for ten years and president of the board of that hospital for six years.

The board of directors holds monthly meetings and examines questions of general policy and are the final administrative board of the hospital. There are six on the board. Children's Hospital is incorporated under an Act of Congress 70 years ago for the purpose of caring for indigent children under the age of 12 years. It now does 85 percent charity or part-charity work and was originally incorporated entirely as a charitable institution. The hospital now has 27 private rooms, from which they derive some revenue, and of course our support is largely dependent upon our appeal to the public. That is, if we do a good job the public supports us for these charity patients.

The Community Chest now buys services from the private hospitals, including Children's through the Health Security Administration, and they pay for it at less than our cost, and they don't always pay for all the services they contract for.

Children's Hospital has a medical staff composed of some of the leading doctors in Washington, the chief of whom is Dr. Joseph F. Wall, a leading pediatrician or child specialist. From the first of February, 1937, we had a so-called courtesy staff or list, which assumes no obligation to attend the little patients in the hospital whose parents cannot pay for them. They merely bring their own patients into the private rooms.

For a great many years we had a prerequisite for admission to the general staff of the hospital that members must be members of the local Medical Society or ethical society, as it is referred to, and that same rule naturally applied when the courtesy staff came into being in February, 1937. About 139 are on the courtesy staff, and 154 on the consulting medical staff, including house doctors and internes. All during 1937 and 1938 it was a prerequisite to membership on the courtesy staff that the applicant be a member of the local Medical Society. While the rule was in being and in effect, it was not written up until October, 1937.

The matter of the application of Dr. Selders was brought up by the Medical Staff at a board meeting. In the correspondence between the hospital and Mr. Penniman, of Group Health, Mr. Penniman was advised on November 15, 1937, that Children's Hospital will accept for treatment or hospitalization any patient in need of care, under its rules and regulations, and that all doctors treating those patients while in the hospital must have staff appointments and be members of the local Medical Society. There was no discussion in the board of directors at the time indicative at all of opposition to Group Health.

Correspondence concerning Dr. Selders' application was resumed in the summer of 1938 when I was in Maine, and there was some delay in responding to the letters because of that fact and also because of the fact that our board doesn't meet in August and September. I do not have copies of these letters, as the Government has stripped our files and has not returned them.

Q. I will show you some letters which have been introduced in evidence, Mr. Drayton. First, I will show you what has hitherto been introduced for the prosecution as Government's exhibit 378—it is Mr. Kirkpatrick to Charles Drayton, dated August 6, 1938. Another, No. 379, from Mr. Kirkpatrick to you, dated September 16, 1938; your letter dated September 19, 1938, to Mr. Kirkpatrick, which has been identified and offered in evidence as Government exhibit 380; and also Government exhibit 381, which is a letter dated November 2, 1938, from you to Mr. Kirkpatrick.

Could you, Mr. Drayton, just quickly glance over, beginning with 378, and see if you can refresh your recollection to advise us whether you personally conducted that correspondence, and what it is about?

A. Well, this is one of August 6, 1938, from Mr. Kirkpatrick to me, thanking me for a letter I wrote him on August 4, in which he says something about taking up with the board of trustees at its next meeting the question of Dr. Selders' admission to the courtesy staff.

The next letter, of September 16, that was simply a tracer from Mr. Kirkpatrick.

Then I told him on September 19, I had overlooked the fact that we had no September meeting of the board, but

that just as soon as the matter could be given consideration I would further advise him; and then the last one here seems to be my letter to him of November 2nd, in which I stated that in view of the proceedings now under way involving Group Health Association it didn't seem possible for us to give any final answer on any aspect of the controversy. Further, that he had theretofore been furnished with a copy of the memorandum of April 1, 1938, embodying the rule promulgated by our medical staff and adopted by our board governing admission to the hospital where an emergency exists, and also the attendance upon such children of members of your staff; and I enclosed another copy of that memorandum.

Q. Do you recall whether the memorandum of April 1st, to which you referred, permitted physicians to treat children in Children's Hospital in emergency cases?

A. It did, and that always has been our rule.

Q. Do you recall whether there was any further correspondence after November 2, 1938, Mr. Drayton?

A. I don't think there was any more, but I am not certain about that; my memory isn't so good.

Q. At least you haven't been able to locate any copies of other correspondence?

A. My attention has not been called to any later letter.

Q. Was it your practice to attend regularly the meetings of the board?

A. Yes.

Q. Do you recall whether at any time there was any action taken by the board with reference to any of this correspondence, which was directed to G.H.A., to restrain it in any way?

A. No, we didn't care anything about G.H.A. We were trying to do the best we could for the hospital.

Cross-examination by Mr. Lewin.

By Mr. Lewin:

Q. Mr. Drayton, you just read from a copy of a letter dated November 15, 1937. Now, as a matter of fact, that letter was never sent, was it?

A. So far as I know it was; I have no other information.

Q. There is in evidence this letter, Government's Exhibit 359, dated November 16, 1937, from the superin-

tendent, Miss Gibson, to Mr. Penniman, and the testimony here is that this is the letter which was received.

A. Well, I don't know; that may be so.

Q. It differs from the letter you read in this: the letter you read contained this statement:

"All doctors treating these patients while in the hospital must have staff appointments and be members of local medical societies,"

whereas that statement is omitted in the letter Miss Gibson sent to Mr. Penniman. Now, isn't it true that was omitted at your direction?

A. Not at all; I had no knowledge of it until this moment, that it had been omitted.

Q. But it seems perfectly clear that another letter was substituted for the one of November 15th?

A. It so appears.

Q. Do you know why?

A. Not at all.

Q. You attended, did you not, the meeting of the members and incorporators of Children's Hospital held on December 6, 1937?

A. I guess so.

Q. That was just about three weeks after the letter I showed you was sent by Miss Gibson, was it not?

A. Yes.

Q. Don't you find there that on December 6, this occurred:

"Only physicians, surgeons, and dentists who are licentiates of the District of Columbia and also members of the District Medical Society or ethical body in their locality shall be eligible for appointment to the Medical Staff.

"Physicians, surgeons, and dentists not officially connected with the hospital, but members of their ethical medical societies, may be accorded the privilege of using the facilities of the hospital as a matter of courtesy for a term that shall continue during the pleasure of the board of directors, those accepting such privileges to be known as the courtesy staff;"

and some more which I don't believe is particularly pertinent?

A. That seems to be what this shows.

Q. So, some three weeks after this letter was written, you amended your by-laws for the first time requiring

membership in the District Medical Society as a condition to the appointment to your courtesy staff?

A. That appears to be so, but that has been the practice for many years.

Q. You had only had a courtesy staff for less than a year, had you not?

A. I correctly stated that in my direct, but said that it applied to the medical staff for many years and, thereafter, applied to the courtesy staff when it was formed in 1937.

Q. You say it applied to the medical staff for many years, but you say it was the custom to apply it to the courtesy staff from February, 1937, on?

A. Yes.

Q. But you had no such regulation during all those years.

A. The courtesy staff was not in existence until early in 1937.

Q. You had no such regulation until December 6, 1937.

A. Not any written regulation.

Q. Is it not true that the reason you made this change on December 6, 1937, was that you had just received, five days previously, a letter from Dr. Conklin of the District Medical Society, enclosing a resolution of December 1st, of that Medical Society, stating that as a matter of educational policy the hospitals should adopt a rule confining their entire staffs to members of the District Medical Society, or other local societies of the A. M. A.?

A. That had been the custom so long that we were simply following it in putting it in writing.

Q. Didn't you put it in writing on December 6, 1937, as a result of the receipt of this communication from the Medical Society of the District of Columbia?

A. I say "No," not as a result of it. It may have called our attention to the fact that the practice that we had been carrying out for many years had not been in writing, and resulted in that being done.

Q. Will you look at this list of members of the outpatient department of Children's which was obtained, I believe, from your hospital, and tell me—this is September, 1938—whether all those doctors are members of the District Medical Society?

A. I couldn't tell you; I don't know.

Q. Now, as a matter of fact, do you know whether Dr. Sigmund Newman, of Virginia, was a member of the District Medical Society or not?

A. He may be a member of the Virginia society, which would be recognized as of the same ethical standard.

Q. Do you know whether he is a member of that society?

A. No.

Q. Do you know whether Dr. Stephen Verges is?

A. I don't know. There is no use going through all those and asking me about them, because I don't know.

Q. As far as you know, there may be a number of them who are not?

A. As far as I know there may be anything about it that I don't know.

Q. Did the minutes of your meeting of the medical staff of Children's Hospital for April 4th (Gov. Ex. 523) come to your attention?

A. Let me have a look at it. No, I will say this generally. We don't see the minutes of the medical staff.

Q. This didn't come to your attention?

A. No.

Q. And you weren't aware of this action that I am pointing out to you there?

A. No, I have no knowledge of this, but I did write the letter to Senator Capper.

Q. Now, when was Group Health Association or Dr. Selders notified that his application had been rejected at the Children's Hospital?

A. I don't know, Mr. Lewin.

Q. As a matter of fact, do you know whether he was ever notified?

A. I don't know whether he was definitely notified or not.

Q. Apparently we have no letter of such notification. I wondered if you ever saw one.

A. No, I have never seen one. I don't believe there was any such letter, after mine of November 2, 1938.

Q. I am speaking now the fall of 1937, or the early part of 1938.

A. I doubt he was definitely notified, but I am not familiar with anything to the contrary.

Q. Did you understand that his application was definitely rejected in the fall of 1937, or the early part of 1938?

A. Well, if you want me—I think it was rejected by the committee of the medical staff, which passes on those applications, but I am not certain.

Q. Don't the board of directors pass finally on those applications?

A. Well, yes, it is submitted by the staff, but as your Dr. Cabot stated we rely and must rely on the medical staff.

Q. Do you remember them making a recommendation to you in the latter part of 1937, or early part of 1938, that Dr. Selders' application should be rejected?

A. I really don't; my memory is bad, and there has been a lot of things since that time; it may have been done.

Q. You don't remember receiving a letter from Mr. Kirkpatrick, calling your attention to Judge Bailey's decision with reference to Group Health (Gov. Ex. 376); that was written July 28, 1938?

A. Yes, I guess so; it brings it back to me now.

Q. Isn't it true that was forwarded to you at your summer home in Massachusetts?

A. Yes.

Q. And you remember that you replied to Mr. Kirkpatrick August 4. I wonder if this would refresh your recollection as to whether he had been rejected before that time. Don't you say:

"As soon as our board meets in September I shall take up the question as to what position we should now take respecting Group Health Association, Inc. and advise you on behalf of Children's Hospital. Since the matter is one of great importance and since our position heretofore has resulted from formal action taken by our board, you will understand that I am not able now to announce any change."

A. That action by the board may have been of a general nature. I am not sure it was directed to Dr. Selders' application, because the general rule that had always been in effect may have been what I referred to.

Q. Your impression is that the action of the board requiring membership in the local society was taken with respect to G. H. A.?

A. I didn't say with respect to G. H. A.; I meant in applying the rule that our staff should be recruited from the Medical Society generally.

Q. When you say, "our position heretofore has resulted from formal action taken by our board," weren't you talking with respect to the action taken by the board in regard to Group Health, which you mentioned in the sentence just before that?

A. It may have been that; it may have been the general rule or it may have been some specific objection to Dr. Selders' application.

Q. In any event, what you told Mr. Kirkpatrick was that you would take up the question of your position as regards Group Health in the fall of 1938, and not as regards Dr. Selders.

A. That may be and then subsequently I found we didn't have a meeting in September.

Q. And when you said the matter is "one of great importance," weren't you referring to your decision with regard to Group Health?

A. Oh, the whole problem of Group Health; that is true.

Q. Then, I believe it is true, isn't it, that you wrote Mr. Kirkpatrick and told him you would take the matter up with the board at its meeting in September, and then, in September, after receiving another letter from Mr. Kirkpatrick, you told him you were under a misapprehension, that the board had not met in September,—and then you say your letter of November 2nd, 1938, is the last communication on the subject; is that right?

A. The last I know about.

Q. And that was just about a year after Dr. Selders had applied for privileges?

A. Yes, he had correspondence—Mr. Kirkpatrick with Miss Gibson, and she had given him what we regarded as some definite answer.

Q. That is what I was looking for. Can you [illegible] any definite answer?

A. I mean in advising him that in order to practice in the hospital he would have to be a member of the staff, and then placing back of that the thought that members of the staff must be members of the local medical society. That would seem to have been somewhat of an answer—not as direct and definite, perhaps, as you would like, but an answer.

Q. Did you know at the time that Dr. Selders himself was a member of the Harris County Medical Society, a constituent society or component body of the A. M. A.?

A. I don't know whether I heard that since or before.

Q. Did his application show that to you?

A. I never saw his application because, as I say, we leave that to the medical staff to pass on.

Q. Would that have brought him under the operation of this rule which you adopted in the early part of December, 1937?

A. Oh, you mean the rule concerning membership in the local society or ethical body?

Q. Yes. Would that have brought him under that rule?

A. That fact alone, if he had been in good standing and recognized as qualified to do the things that he claimed able to do, and made application to do, I would say yes.

Q. Well, do you know whether he was, or not?

A. Whether he was qualified or not?

Q. Yes.

A. I know that the medical staff didn't think so and they made inquiries concerning him, and rejected him for that specific reason.

Q. Do you know what inquiries the medical staff made?

A. They inquired of the College of Surgeons.

Q. You mean the Washington Academy of Surgery?

A. Yes.

Q. Did they refer his application to the Washington Academy?

A. They asked it concerning this man's qualifications; his application having been for all sorts of surgery at Children's Hospital.

Q. Did Dr. Selders give you some references?

A. Probably so.

Q. Did you write to his references?

A. I presume so and I am aware of one letter written to the Worcester Hospital, of which I have been told.

Q. That was written by your medical staff?

A. Yes, Dr. Titus wrote the letter and had a reply. He is a member of our staff.

Q. And he wrote it in his capacity as a member of your staff?

A. I don't know in what capacity he wrote it, but he wrote a letter and the report was adverse on Dr. Selders.

Q. I wonder if we might have that letter.

A. Well, you will have to get it from Dr. Titus. I haven't it. I am trying to answer your questions as best I can. I am not submitting that letter, because I haven't got it.

Q. Are you positive that you saw it in the files of the Children's Hospital in response to a letter from your staff making inquiry on the subject?

Mr. Leahy: He didn't say that.

The Witness: I didn't say I saw it in response to a letter of our staff. I said I had been told such inquiry had been made.

Q. You don't know whether your staff or any member representing it communicated with any of Dr. Selders' references?

Mr. Richardson: He said he did know. He said Dr. Titus did and that Dr. Titus was on their staff.

The Court: He very carefully told you he didn't personally know what went on; that the medical staff took care of those matters, and then you asked him if he heard concerning it, and he answered that question.

By Mr. Lewin:

Q. Well, I will see if I can make this clear: Do I understand that in the files of the Children's Hospital you have at any time had a letter from Dr. Selders' references?

A. I haven't examined that file; in fact, it was taken over by the Government.

Q. Did you respond to the subpoena?

A. Yes.

Q. Did you produce any such letter?

A. I wasn't asked for any such letter.

Q. Well, such files were not taken over by the Government.

A. There was some indication later that a great many of the letters were taken.

Q. Do you know, as a matter of fact, that the Government has received any such letter as you describe?

A. No, I said I hadn't seen any such letter.

Redirect examination.

At the time I wrote the letter of November 2, 1938 (Gov. Ex. 381) the whole atmosphere was charged with doubt about the legal status of Group Health, as witness the Corporation Counsel's opinion. Judge Bailey's decision was in August, 1938, and favorable to Group Health, after they had changed the by-laws, and so on; and then there was a possibility—in fact, it was understood—that further action was being taken to determine this question, or might be taken. The whole thing was in doubt, in view of the pend-

ency of these several matters in the court, or in legal channels. We felt that we were not in a position then to do business with a group whose legal status was in doubt.

SAMUEL H. ROGERS, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I am president of the board of directors of Casualty Hospital. I recall a meeting in 1938 with Mr. Loomis and Mr. Kirkpatrick. In fact, we had two meetings.

At a meeting at which Mr. Loomis and Mr. Kirkpatrick were present the proposition was made that they take over a wing or bay of the Casualty Hospital, and at that time either Mr. Kirkpatrick or Mr. Loomis pointed out it would be an excellent time for us to get some favorable publicity by joining in with Group Health, who had been favored with a great deal of publicity and was being favored with a great deal of pubilicity at that time. It was brought to our attention that they had excellent publicity and I couldn't recall the words exactly, but it amounted to the same thing; that they had a very excellent publicity man. They told us that high officials of the Government were very much interested in this movement and the members of Congress were interested in it; they didn't mention who or how many. They let us know that they had the backing of Government officials and at least some members of Congress. They made a proposition that they might lease a wing of the hospital, as they previously had representatives go through the hospital, and it happened that at that time we were not crowded. I told them that we were organized for a definite purpose and that that plan didn't fit in with the definite purpose. Our purpose was to maintain an institution for furnishing emergency medical and surgical service and hospitalization to all, regardless of race, color, religion, or ability to pay. They let us know that they were not interested in that part of it. They were interested in taking care of Group Health patients and having Group Health doctors attend them. At the second conference we merely told them that we didn't see how we could change our setup to suit their requirements.

DR. HENRY ROLFE BROWN, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I have resided in the city of Washington for seven years. I am a retired physician. I retired in June, 1937.

I took my medical course at the University of New York and graduated in 1889. I took my interneship at the Bellevue Hospital in New York and then went to San Francisco and engaged in the private practice of medicine until 1898. Then I practiced medicine in Providence, Rhode Island, until I joined the Army in 1916. I was a member of the Medical Corps then for several years and went overseas.

On my return from service overseas I went into the Veterans Administration for the purpose of operating and organizing their hospitals and clinics. I organized a Veterans Hospital in Rutland, Massachusetts, spent three or four years there. Then I was transferred to Aspinwall, Pennsylvania, opposite Pittsburgh, and stayed there for ten years. Then I came to the Veterans Administration in Washington where I was put in charge of all tuberculosis hospitals throughout the United States, where I remained until I retired in June, 1937. There are 20 tuberculosis hospitals under the direction of the Veterans Administration.

Mr. Otterman of the Home Owners Loan Corporation approached our medical director, Dr. Griffith, in the Veterans Administration and asked him if there was any member on his staff who would be interested in the Group Health venture. He contacted me, talked the matter over two or three times, laid out the plans for organizing Group Health, and I believed then, as I do now, that such a thing would be very valuable for the community, especially those in the low-income groups, and I went into it with the idea of developing it and making it a success. These conversations began in March or April of 1937. In the latter part of April definite arrangements were made for me to become the medical director of Group Health.

I first met Dr. Neill at a meeting of the executive committee of Group Health at the Medical Society Building on M Street. I again met Dr. Neill at Mr. Childress' house at a meeting which followed the meeting in the Medical

Society. On the occasion of meeting Dr. Neill at Mr. Childress' house, Mr. Childress, Mr. Penniman, Mr. Zimmerman, and Mr. Russell and myself were present. Mr. Penniman was there as president of Group Health. Mr. Zimmerman never had any position in Group Health but was the real man behind the operation of it. Mr. Russell was the legal adviser and chief counsel of the HOLC. I was at the conference that night as the medical director of Group Health, as I had already assumed office.

At that conference at Mr. Childress' house Mr. Penniman to my knowledge did not offer the position of medical director to Dr. Neill, and I was there during the entire conversation, and had already been employed as medical director.

At the meeting at the Medical Society I don't remember all those present, but I do remember Dr. Neill, Dr. Groover, and Dr. Macatee, and there were quite a few more. Mr. Zimmerman and Mr. Penniman accompanied me. We discussed the proposed meeting at the Medical Society several days before, and finally I was called on the telephone and asked to meet Mr. Penniman and Mr. Zimmerman at the Mayflower Hotel, where we would have dinner together and then proceed to the medical meeting. The meeting at the Medical Society was the first time that I had met and discussed the matter with members of the District Society. We met at the Mayflower Hotel before we went to the Medical Society building—that is, Mr. Zimmerman, Mr. Penniman, and I.

At the dinner Mr. Penniman and Mr. Zimmerman advised me that the purpose of the meeting was for the Society and Group Health to try and get together on the organization of Group Health. I then asked them, "What information are you going to give them, and how far do you want to go with them in their plans?" and the replies from both Mr. Penniman and Mr. Zimmerman were not to do any more and not to go any further than was necessary, and to tell them as little as possible.

Following the dinner we walked to the Medical Society, and just before we entered they stated, "Now don't forget, we will give them just as little as possible," or words to that effect; and at the meeting the advice which was given at dinner and just before entering was followed pretty fairly.

Arrangements were made at the first meeting to meet the board of trustees of Group Health in the HOLC assembly room at a later date. I was present on that occasion, as were almost all of the board of trustees of Group Health, and a great many of the committee from the Medical Society. That meeting was not as satisfactory as the first meeting. Dr. Groover, I think, did most of the talking and told us a great deal about the failure of such organizations in different parts of the country and abroad.

After that we did not have any formal meetings of any kind between the District Medical Society and Group Health over the period of time when I was medical director, from June 7, 1937, until the 30th of April, 1938. When I first became medical director no arrangements had been made with the hospitals in the District for the reception of patients of Group Health. Mr. Penniman and Mr. Zimmerman met with me at lunch, and it was decided that I approach the hospitals on the question of courtesy privileges for the members of our staff.

This I did. I first went to Emergency where I contacted Mr. Sandidge, who referred me to Mr. Gist Blair, whom I saw. Major Blair asked me to submit a letter requesting what our desire was. I returned to the office. In the meantime my office had been in that of Mr. Zimmerman at the HOLC building where I had my headquarters. I formulated a letter requesting privileges at Emergency Hospital, as suggested by Major Blair, and submitted it to Mr. Penniman. Mr. Penniman contacted Mr. Zimmerman, and it was decided that we would meet again the next day at luncheon.

We met the next day, and at that meeting I was advised that they would take care of the hospital situation and I need give it no further thought. Following that I had nothing whatever to do with the hospital situation.

With reference to the mail coming to Group Health, a great many of the letters were addressed to the clinic on I Street and were usually addressed to the medical director. I opened several of those letters which were directed to the medical director. Some of them were from the hospitals, which I would return to Mr. Zimmerman and Mr. Penniman. Later I was instructed not to open any mail, and to send it on unopened to them, and from the time of the second luncheon I had no authority to deal with the

hospitals at all as medical director, and it was done by Mr. Penniman.

The clinic opened on November 1, and at that time I had a staff. One of the members was Dr. Raymond E. Selders, whom I employed as a surgeon for the clinic, to do minor surgery. I did not employ him to do general surgery of all kinds, as I did not think he was competent to do general surgery, because he didn't have the training nor the qualifications. I had nothing to do with the attempt to try to get privileges to do general surgery in the Washington hospitals for Dr. Selders.

My agreement in the beginning was that I was to take complete charge of the medical direction of the clinic and of Group Health, and I accepted the position on that ground. But they didn't need a medical director there, it soon developed. They needed a rubber stamp. That was all that was required. With reference to the duties that had been been assigned to me as medical director, the board of trustees took them over themselves, and most of them were taken over by Mr. Zimmerman and Mr. Penniman.

In the beginning Group Health functioned very efficiently because we didn't have so many patients. On a small staff of four or five we could handle the patients very well, but gradually they crowded in so that we couldn't give attention to the patients on account of the great number of patients with so few doctors. I had complaints from the doctors and members of the staff about that. While it depends very largely on the class of patients or conditions that one meets, an average of 20 to 25 patients a day would be a good, hard day for any doctor in a clinic like Group Health.

After the clinic opened and when the patients began coming in, the patients ran as high as 60 per day to a doctor. I do not think that a doctor can give efficient service to as many as 60 patients a day.

After that condition started, it continued as long as I was associated with the group. The agreements we doctors had with Group Health were all verbal; there was never a written contract or agreement. I employed Dr. Selders and I employed Dr. Lee. I employed Dr. Lee under a verbal contract. I employed Dr. Scandiffio. I employed him under a verbal contract.

The two proposed written contracts which were received in evidence in this case were gotten up for the sole pur-

pose of presenting them to the Medical Society. These were not in existence before the hearing of Dr. Scandiffio at the Medical Society. These papers were prepared by Mr. Neuman and Mr. York of the legal department of the HOLC.

After Dr. Lee and Dr. Scandiffio became members of that group I advised them that they should resign from the Medical Society and stated that I did not belong to the Society, and therefore they were without jurisdiction, and that I expected nothing from them. In pursuance of my advice they did resign. Later they withdrew their resignations. I attended the hearings at the Medical Society.

They told me that when they resigned they tendered to the Medical Society a letter in identical terms. Mr. York, Mr. Neuman and Mr. Russell of the legal staff of HOLC were the principal legal advisers of Group Health. Mr. York, Mr. Russell, Mr. Neuman, and Mr. Keely were all present at the trial of Dr. Scandiffio.

Mr. Penniman and Mr. Zimmerman displayed a great deal of interest in the operation and administration of the clinic, interfered quite frequently in small things, would frequently meet Dr. Selders and other members of the staff outside the clinic and discuss matters that should properly come before the medical director and through him to the trustees. There was a great deal of interference in many ways.

I selected the staff, both professional and lay, for the clinic almost entirely, with one exception, and that was Dr. Dabney, whom I contacted and was asked to present him to the board of trustees. In pursuance of a telephone call I sent Dr. Dabney to see Mr. Loomis and Mr. Russell, who employed him, so as medical director I did not arrange the employment of Dr. Dabney. Dr. Dabney was to serve upon the staff in nose and throat cases.

I know Mr. Kirkpatrick and first met him early in the organization of Group Health, and he was the second president of Group Health and was vice president under Mr. Penniman. Until he became president he didn't take much interest in the clinic. Mr. Penniman and Mr. Kirkpatrick circulated a great deal among the patients when they came to the clinic. The attitude of Mr. Penniman and Mr. Zimmerman toward the medical profession generally was not at all good. They very frequently, especially Mr. Penni-

man, presented me with everything that was against the doctor.

The witness then testified as follows, which testimony on motion of the Government was stricken from the record over the objection and exception of the defendants:

One day Mr. Penniman came in with a very scathing article from a West Coast paper regarding a patient in a hospital out there and passed it to me to read. It was a very nasty article. I read it very slowly, and after reading it I passed it to Mr. Penniman and said, "Mr. Penniman, you don't want to forget that I am a doctor, and I don't want any more such things from you."

Mr. Penniman did at that time, and on many previous occasions, hold doctors in more or less disdain and stated, "Well, they just don't amount to much," and said, "They are not up to date. They are not businesslike." They don't know how to do this, and they don't know how to do that. A lot of trivial stuff that didn't amount to anything.

When Mr. Kirkpatrick took office at Group Health there were quite a number of members of Group Health who had elected to be operated on. An elective operation is one that may be done at any time, whereas an emergency operation is one requiring immediate attention. As I recall, there were about 60 or 75 elective operations pending. Some of these operations were major operations, and I didn't want Dr. Selders to do them unless they were simple cases, and the others were those that the hospitals were not admitting, although we admitted all emergency cases to the hospitals, or those that were supposed to be emergency cases. The instructions that I received from responsible officials of Group Health with reference to dealing with these operations were to put as few in the hospital as possible because the funds were low.

While I was medical director I made an effort to replace Dr. Selders sometime in the latter part of January or early in February of 1938. I first met Dr. Selders when I contacted him through the Physicians' Exchange in Chicago, which is a sort of employment bureau for professional people, technicians and the like.

While I was at the Group Health the membership grew very rapidly. About 70 per cent of the HOLC membership joined Group Health. Then when it opened up for the other Government departments there was a great rush of ap-

plications, whereupon a great many of the HOLC men dropped out. Such a great number came from the Agricultural Department that they subsequently were so strong as to take over the management.

Q. Do you recall now, Doctor, whether Mr. Penniman, Mr. Zimmerman, and Mr. Kirkpatrick did anything toward getting new members in G.H.A.?

The question was objected to because immaterial. The objection was sustained and an exception noted. Thereupon the defendants offered to prove by the witness that there were solicitations of the employees of HOLC by the persons named in the question, in violation of the ethical standards of organized medicine, and that they then demanded that doctors employed by Group Health be permitted to be and remain members of the District Medical Society whether or not they complied with its rules and regulations, and to further prove through the witness that solicitation is what formed Group Health and that it was not a spontaneous outburst on the part of the members of HOLC, as testified to by Mr. Penniman.

The Court: I do not think we can go into that. It may not be ethical according to the ethical standards of organized medicine, but, after all, it was not illegal. It was not anything that the Court can do anything about.

Mr. Richardson: It is explained as a reason.

The Court: That may be; but I think it is quite clear—it seems to me—that even if they were not conducting it fairly according to the ethical ideas of organized medicine, that did not make them a legitimate victim of restraint.

* * * * * * *

Q. Doctor, do you recall now the rate of dues charged when you first became medical director?

The question was objected to as irrelevant and immaterial. This objection was sustained and an exception noted.

Q. Doctor, under the schedule of dues charged by G.H.A. what, if anything, have you to say of the capacity of G.H.A. to give adequate and complete medical care?

The question was objected to as irrelevant and immaterial. The objection was sustained, and exception was noted. The defendants offered to prove the amount of dues orig-

inally charged by Group Health, that it increased these dues, and that under the dues of G.H.A. complete and adequate medical care could not be rendered, in the opinion of Dr. Brown. The Court rejected the offer and defendants excepted.

The witness then continued:

I resigned from Group Health in the latter part of March, 1938, when I was convalescing and just recovering from an illness, as on that occasion I went down to HOLC one day to talk things over, and Mr. Penniman indicated that my resignation would be accepted, in the presence of Mr. Zimmerman and Mr. Kirkpatrick.

Q. Could you tell us why you resigned?

Government objection sustained.

While I was at Group Health I never had any interference from the District Medical Society.

Cross-examination.

By Mr. Kelleher:

Q. Dr. Brown, did you not know that Dr. Trible had refused to become a consultant for Group Health Association——

A. Dr. who?

Q. Dr. Trible—until——

A. He was never asked by me to become a consultant.

Q. Let me finish my question, please—until G.H.A. could be organized along lines compatible with organized medicine?

A. As far as I am concerned, I never asked him to be a consultant of Group Health or anything else that I am aware of.

Q. Did you ask him for advice about Group Health Association?

A. I talked with him a great deal about Group Health and with a great many other doctors.

Q. Did he not tell you that he could not have anything to do with G.H.A. or anything else unless it met the full approval of the District Medical Society?

A. I don't recall such conversation.

Q. Did you execute an affidavit for Dr. Trible in response to a request from him?

A. Yes, sir.

Q. I show you Exhibit No. 570 and ask you if that is a photostatic copy of the affidavit which you executed?

A. It has my signature on it. It is.

Q. Is that your affidavit?

A. Yes.

Q. In that affidavit do you not state that Dr. Trible had——

Mr. Leahy: Show him the affidavit.

Mr. Kelleher: I showed it to him.

Mr. Leahy: Point to what you are asking about.

By Mr. Kelleher:

Q. In that affidavit did you not state that Dr. Trible had refused to have anything to do with G.H.A. until it was approved by the District Medical Society?

A. I don't recall it. It may be there, but I don't recall it. (After reading document referred to) Apparently that is right.

Q. Did you not also attempt to obtain the services of Dr. Cromer?

A. Dr. who?

Q. Dr. J. Keith Cromer. Do you remember Dr. Cromer?

A. No, I do not.

Q. Don't you remember talking with a gentleman in Washington by the name of Cromer concerning his coming with G. H. A.?

A. There were so many of those men that I do not really recall the names of all of them. I interviewed a great many, and the names of a great many have gone from my mind.

Q. Let me show you what purports to be a letter from Cromer to you, dated October 26, 1937, and ask you whether that refreshes your recollection as to whether you ever talked with Dr. Cromer.

A. Yes. I remember him now.

Q. You remember it now. Did you ask Dr. Cromer to come to G. H. A. on the medical staff?

A. Yes.

Q. Is Gov. Ex. 669 the reply you received from Dr. Cromer?

A. I don't quite recall. It is not very clear in my mind. It is no doubt a fact.

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Q. While counsel is examining that document I will go over another matter. Did you also attempt to secure the services of Dr. C. Tiemeyer?

A. Yes.

Q. In Baltimore?

A. Yes.

Q. Did you ask him to come on the staff of G. H. A.?

A. Yes.

Q. Is this a letter which you received in reply from Dr. Tiemeyer (handing paper to the witness)?

A. Yes.

Government counsel offered Gov. Ex. 669 in evidence. Defendants objected on the ground of hearsay. Objection was overruled and exception was allowed.

Gov. Ex. 669 was received in evidence and read to the jury:

Gov. Ex. 669 is a letter from J. Keith Cromer, M. D., to Dr. Brown, dated October 16, 1937, and reads as follows:

"Dear Dr. Brown:

Pursuant to our recent conversation, I wish to state that I would be glad to take care of the obstetrical work for your clinic on a part-time basis if and when such consultation work is recognized by the District Medical Society. I hope you understand my position in this matter.

Very truly yours, J. Keith Cromer, M. D."

Dr. Cromer was retained as a consultant and took care of quite a few obstetrical cases for Group Health on a fee-for-service basis and not on a salary basis.

Q. Dr. Brown, when you were testifying that some of the lay members of Group Health Association circulated among the patients that were attended by the doctors of G. H. A. you did not mean that there was any interference with the treatment of patients by lay members, did you?

A. I don't think that I made a statement that there was, so far as I recall.

Q. I just wanted to clarify that, that there was no interference with the treatment.

A. No, sir.

Q. At any time, to your knowledge?

A. Not that I know of.

The amount of the salaries to be paid to doctors was pre-agreed upon, and I passed upon the qualifications of the doctors coming with Group Health. My recommendations were accepted by the board of trustees, with one exception, Dr. Dabney. Dr. Dabney was employed in February or March while I was sick.

When I employed Dr. Selders I believed that he was qualified to do clinical work and medical surgery, and the other work I intended to give to consultants outside. I do not believe he was a finely-qualified doctor for general surgery. I did believe he was finely qualified for clinical work, minor surgery in the clinic.

An appendectomy is a major operation, but there are difficult appendectomies and there are very simple appendectomies, but the average appendectomy is a major operation. Dr. Selders did perform an appendectomy at Garfield Hospital, and I was with him. At the meeting of the executive committee I told the committee that I considered Dr. Selders a finely-qualified doctor, but the answer was not qualified, and I told the executive committee that he was doing appendectomies at Garfield Hospital. They were very simple cases.

Redirect examination:

When Dr. Selders did an operation at Garfield I stood right close to him as an observer. The salaries of the doctors of the staff of Group Health were a matter of discussion and agreement, and any salary over $4,800 per year to begin with had to be taken up with the executive committee or the board of trustees, and the board determined whether to give a man more salary or not.

A great many members of Group Health resigned because they did not believe they were getting sufficient medical care, and I do not believe that any doctor can give adequate medical care to 40, 50, or 60 patients daily.

Recross-examination:

That is my signature on the bottom of Gov. Ex. 671. I am 70 years old.

MRS. BETTY LOGSDON, a Witness for the Defendants.

Direct examination.

By Mr. Leahy:

I am employed by Dr. Warfield. I have been employed by him since 1936 as secretary. I recall a question that was asked me when I was on the stand as a witness for the Government with reference to sending out the questionnaires I prepared to the hospitals, and at that time I think that I said my best recollection was that I had mailed them out, but since then I have refreshed my recollection on going back to the office and realized I had made an incorrect statement, which I wish to correct. Those questionnaires did not go to the hospitals but were mailed to the members of the hospital committee of the Medical Society, and none of them were mailed to the hospitals.

Cross-examination.

By Mr. Kelleher:

I recall that copies were sent to the members of the hospital committee, but I could not definitely say who they were at that time. On going back to the office I remembered distinctly that the questionnaires were not sent to the hospitals.

Def. Ex. 57 was received in evidence and read to the jury as follows:

"Sibley Memorial Hospital

"November 27, 1937.

"DEAR DOCTOR:

"Dr. Raymond Everett Selders has requested the privilege of treating the following in Sibley Memorial Hospital:

"Medicine, Minor & Major Surgery, Normal & Abnormal Obstetrics, Minor & Major Gynecology.

"As a member of the Advisory Committee on Medicine will you kindly indicate your approval or disapproval at the bottom of this letter and return it to the office of the President of the Hospital before Tuesday.

"Very sincerely yours, R. Lee Spire, M. D., Chairman."

"Applicant's credentials on file in the office of the President.

"Attention of the Committee is called to the fact that above applicant is one of the salaried physicians of the Home Owner's Loan Corporation Group Health Association and that information as to his qualifications and correspondence in connection with his application will be found on file in the president's office available to members of the various committees concerned for their information.

"Disapproved.

"(Signed) Thomas E. Mattingly, M. D.

"Explanation appended.

"Dr. Lewis H. Taylor, Sibley Memorial Hospital, Washington, D. C.:

"My Dear Doctor Taylor:

"As a member of the Medical Council, I have been asked to indicate my approval or disapproval of the application of Dr. Raymond Everett Selders for the privilege of practicing 'Medicine' in Sibley Memorial Hospital. Ordinarily I would regard it presumption to disapprove a candidate because in his application, he requested hospital privileges, other than those it is my jurisdiction to pass upon. Yet in this particular case, I cannot ignore the fact that this applicant, just ten years out of medical school, has requested, and has certified himself as eligible to receive such additional hospital privileges, that should they be granted, it will be the equivalent of the hospital board certifying him to prospective patients, as competent to practice without restraint or exception, all of the highly specialized branches of the Healing Arts, with the possible exception of psychiatry.

"Approval of this application, in its present form, would give to a stranger in our midst, privileges and sanctions not accorded to any other physician of professional eminence, practicing in our hospitals or occupying major chairs in our two, white, grade A medical schools. This rather unprecedented application for extraordinary privileges comes strangely from one whose unsurpassed erudition has not yet been recognized by honorary degrees bestowed by appreciative universities of learning, or stranger still, has not been admitted to membership in either the American College of Surgeons or the American College of Physicians.

"I did note with interest, his alleged membership in our parent body, the American Medical Association and logically assumed that he subscribes to its ideals and is obedient to its regulation and discipline. If such be the case, he will readily appreciate its injunction, making it mandatory for responsible hospital executives and hospital trustees to protect their prospective patients from the preventable hazards incident to a desultory and indifferent exercise of their appointive powers, in passing upon the qualifications of members of the visiting staff. Whereas a moderate degree of leniency and compromise is excusable, relative to their approval of general practitioners, both the American Medical Association and the American College of Surgeons most emphatically insist that the credentials of those soliciting the privilege of practicing the specialties, be thoroughly and conscientiously challenged. These credentials are challenged by responsible agencies of the organized medical profession despite the fact that the applicant may be already possessed of a mandate and authority from the state, in the form of a license, to do the very act or acts, he petitions the hospital board to approve.

"In this particular case, this applicant, like myself, is already licensed by the state to practice each and every branch of the Healing Arts for which he requests hospital privileges. So far as the state, in this instance, the Federal Government, is concerned, both the applicant and I have a legal right to practice medicine and surgery in all of its many branches, yet it is generally conceded that hospitals would be criminally derelict in their duty if they allowed their visiting staff, the comprehensive privileges sanctioned by the law. To protect the unsuspecting patient against incompetence, poor judgment, criminal negligence and rash experimentation, any or all of which might be legally defensible, the organized medical profession, acting through the appointive power of hospital boards and hospital executives, has forced high and exacting standards of internal discipline, professional competency and ethical liability upon all hospitals, without the dutiful observance of which no hospital may continue to operate with its seal of approval.

"To this end each and every applicant for hospital privileges, particularly in the specialties, must prove beyond any reasonable doubt, their indubitable fitness to receive the same. This means not only certifications of professional

competency but those qualities of character commensurate with the extent of the authority so delegated. I can hardly conceive of our Medical Council being so derelict in its duty and responsibility to prospective patients as to admit by inference, that one person can adequately qualify as internist, obstetrician, gynecologist, nose and throat specialist and general surgeon, clothing him with authority and permission to perform the most hazardous and difficult procedures of these specialties.

"It is not unreasonable to demand that the Medical Council of Sibley Memorial Hospital apply the same conscientious rules of procedure in granting these most extraordinary privileges to a stranger in our midst as were used in the case of those of us who have been under the Medical Council's direct observation for a far longer period than this applicant has been out of medical school.

"I personally shall continue to disapprove this applicant until he with some modesty and reasonableness, makes up his mind whether he desires hospital privileges as a general practitioner, nose and throat specialist, obstetrician and gynecologist, or a general surgeon. Because this applicant has reduced his own request for hospital privileges to an absurdity by the unreasonable enormity of his demands, I heartily disapprove of it and petition the Executive Committee to reject it in its entirety.

Fraternally yours, Thomas E. Mattingly, M. D."

The defendants offered the following records identified as produced as the records of the Home Owners Loan Corporation: Def. Ex. for identification No. 48, Def. Ex. for identification No. 49, Def. Ex. for identification No. 50, and Def. Ex. for identification No. 50-A, as follows:

DEFENDANTS' EXHIBIT 48

Subpoena served on the undersigned in the case of the United States vs. American Medical Association, et al., #63,221, Criminal Docket, includes:

Item 3. "All resolutions of the Board of Governors of the Federal Home Loan Bank Board pertaining in any way to Group Health Association, Inc. up to and including December 20, 1938".

Item 5. "Except from the minutes of the meeting of the Federal Home Loan Bank Board of October 1, 1936, pro-

viding for the drafting of a letter pertaining to group medical service for employees to be signed by the Chairman of the Board and sent to all employees together with a copy of the letter so drafted and sent to all employees".

This is to certify that the attached excerpt from the minutes of a meeting of the Federal Home Loan Bank Board of October 1, 1936 is the only minute entry, including resolutions, in the minutes of the Federal Home Loan Bank Board pertaining in any way to Group Health Association, Inc., up to and including December 20, 1938.

(Signed) J. Francis Moore, Secretary, Federal Home Loan Bank Board.

Mr. R. R. Zimmerman, Director of Personnel, and Mr. Luke E. Keeley, Associate General Counsel, Home Owners' Loan Corporation entered the meeting and discussed with the Board a plan for group medical service for employees of the Board and the agencies under its supervision. A committee was appointed consisting of Mr. Keeley, as Chairman, and Messrs. Loomis and Zimmerman to draft a letter on this subject for the signature of the Chairman of the Board to be sent to all employees.

I hereby certify that the foregoing is a true and correct excerpt from the Minutes of a Meeting of the Federal Home Loan Bank Board, October 1, 1936.

(Signed) J. Francis Moore, Secretary.

January 28, 1937.

To all Employees, Federal Home Loan Bank Board, Washington, D. C.:

Arrangements have been made for a meeting of all employees of the Federal Home Loan Bank Board and its agencies at the Government Auditorium, located between the Department of Labor and Interstate Commerce Commission Buildings, on Constitution Avenue, at four o'clock Thursday afternoon, January 28. The subject of the formation of a group medical association is to be presented. It is requested that all but minimum skeleton staffs required to handle telephones, etc., attend promptly at four o'clock.

(Signed) T. D. Webb, Vice Chairman.

Subpoena served on the undersigned in the case of the United States vs. American Medical Association, et al. No. 63,221, Criminal Docket, includes:

Item 1. "Letter dated November 16, 1937 from Horace Russell, General Counsel to the Federal Home Loan Bank Board, with the notation thereon 'Approved by Board, November 19, 1937, H. R. Townsend, Assistant Secretary.'."

Item 4. "Letter dated November 16, 1937 from Horace Russell, General Counsel to Federal Home Loan Bank Board pertaining to Group Health Association, Inc., which was approved by said Board on November 19, 1937".

This is to certify that the attached letter dated November 16, 1937 which corresponds with the request under Item 1 is the only letter in the files of the Federal Home Loan Bank Board which answers the description called for under Items 1 and 4. The two items appear to be one and the same.

(Signed) J. Francis Moore, Secretary, Federal Home Loan Bank Board.

November 16, 1937.

Federal Home Loan Bank Board.

DEAR SIRS:

I find that Group Health Association, Incorporated, has agreed to submit any amendment of its by-laws to the Federal Home Loan Bank Board for approval, and the attached amended by-laws are submitted for such approval.

The by-laws were amended by re-enactment in the attached form. Such amendment was necessitated to strengthen the legal position of the association. The original by-laws provided for payment of cash indemnities upon certain contingencies, such as hospitalization outside of the area of its operation, and such provision would have made it an insurance organization. These revised by-laws provide for it to secure doctors and provide hospital rooms and service for members to the extent of its available funds as limited in the by-laws, but do not provide for the payment of any cash indemnity at all. There is no change of substance but merely a change of the legal nature of the contract in this respect. The original by-laws permitted membership after separation from the Federal service. This revision excludes membership except in the case of

employees of the executive branch of the Government, excluding the Army and the Navy, and this provision is made to assure us the benefit of an exception from insurance regulations, if we are held to be an insurance company.

While there are changes at a number of places in the by-laws, all of these are intended to strengthen the legal position of the association, and none of them seem to the Board of Trustees to be of any substance. The Federal Home Loan Bank Board is requested officially to approve the revised by-laws.

Very truly yours, Horace Russell, General Counsel.

Approved by Board November 19, 1937.

(s) H. R. Townsend, Assistant Secretary.

I hereby certify that the above is a true and correct carbon copy of a letter with the original signature of H. R. Townsend thereon.

(Signed) J. Francis Moore, Secretary.

March 22, 1937.

Mr. W. F. Penniman, President Pro tempore, Group Health Association, Inc., Washington, D. C.

DEAR MR. PENNIMAN:

Pursuant to your request of even date, the Board of Directors of the Home Owners' Loan Corporation today nominated A. S. R. Wilson and W. C. Kirkpatrick to be elected as trustees of Group Health Association, Inc., and as such trustees to be members of the executive committee of said Association.

The Board of Directors deemed it unnecessary to nominate four with two to be elected.

Very truly yours, H. R. Townsend, Assistant Secretary.

HRT/EW

Group Health Association, Inc.
Washington, D. C.

March 22, 1937.

The Federal Home Loan Bank Board, New Postoffice Building, Washington, D. C.

GENTLEMEN:

In accordance with the terms of the contract by and between the Group Health Association, Inc., and the Home Owners' Loan Corporation, approved at a meeting of the Federal Home Loan Bank Board, held on March 17, 1937, it is provided, among other things, that two of the Trustees of the Group Health Association, Inc., shall be elected from nominations made by the Federal Home Loan Bank Board, who shall be members of an Executive Committee of five.

It is respectfully requested, that in compliance therewith the Federal Home Loan Bank Board furnish the Group Health Association, Inc., with the names of those it desires to be placed on the ballot. If agreeable to the Federal Home Loan Bank Board, it would be preferable to provide the names of four candidates which will be grouped separately on the ballot and instructions given to vote for two.

Very truly yours, Group Health Association, Inc.,
By (signed) W. F. Penniman, President Pro tempore.

Group Health Association, Inc.

Washington, D. C.

April 3, 1937.

To: Mr. Fred W. Catlett, Member Federal Home Loan Bank Board. From: William F. Penniman.

Pursuant to paragraph four of the agreement between the Group Health Association, Inc., and the Home Owners' Loan Corporation, we take pleasure in presenting to you herewith a copy of the by-laws of this Association, as adopted by its Board of Trustees March 22, 1937, and later amended.

It would be appreciated if the Association could receive an early reply as to whether or not these by-laws meet with

the approval of the Board of Directors of the Home Owners' Loan Corporation.

Group Health Association, Inc., By (s) Wm. F. Penniman, President.

I hereby certify that the above is a true copy of a letter in the records in the Office of the Secretary, Federal Home Bank Board.

(Signed) J. Francis Moore, Secretary, Federal Home Loan Bank Board.

Whereas, Home Owners' Loan Corporation contracted with Group Health Association, Incorporated, for certain services to be rendered as is shown by the resolution of March 17, 1937, and the contract in Minute Exhibit File No. 519, and

Whereas, said contract requires said association to provide by-laws satisfactory to the Corporation and to provide in its by-laws for two of its directors to be elected from nominations made by the Federal Home Loan Bank Board who shall be members of an Executive Committee of five, and

Whereas, proposed by-laws have been submitted and considered, therefore:

Be It Resolved, that said by-laws submitted as shown in Minute Exhibit File No. 519 be approved subject to amendment as follows:

By striking the words "and administrative" in the first line of Section 4, of Article V, on Page 9; and

By adding to Section 1, of Article IX, the following:

"Provided that so long as the association is obligated to Home Owners' Loan Corporation to permit the Federal Home Loan Bank Board to designate two members of the Board of Trustees who shall be members of the Executive Committee, no amendment shall be adopted which would violate that obligation."

I hereby certify the above is a true and correct copy of a resolution adopted by the Board of Directors of Home Owners' Loan Corporation on June 4, 1937.

(Signed) H. R. Townsend, Assistant Secretary.

Group Health Association, Incorporated
1328 Eye Street, N. W.
Washington, D. C.

October 23, 1937.

Mr. F. W. Catlett, Member of the Board, Federal Home Loan Bank Board Building, Washington, D. C.

DEAR MR. CATLETT:

You are invited to attend a dinner at the Mayflower Hotel next Saturday evening, October 30th, at 6:30 o'clock.

This occasion marks the inauguration of a plan sponsored and developed by the employees of the Home Owners' Loan Corporation and other agencies under the Home Loan Bank Board, to provide for themselves and their families, complete medical service at low monthly rates, through the establishment of a modern diagnostic and treatment clinic.

The principal speaker will be Dr. Richard Cabot of Harvard University, an outstanding medical authority, who has been in the forefront in the study of group practice and group payment plans. For many years he was Chief of the Medical Staff of the Massachusetts General Hospital and is now Professor Clinical Medicine at the Harvard Medical School. Other distinguished speakers will be present.

Tickets, which are $2.50 each, may be obtained from Mr. Ormond E. Loomis. It is hoped you will find it convenient to attend.

Sincerely yours, (S) W. F. Penniman, President.

I hereby certify that the above is a true copy of a letter in the records in the Office of the Secretary, Federal Home Loan Bank Board.

(Signed) J. Francis Moore, Secretary, Federal Home Loan Bank Board.

The exhibit included the By-Laws of Group Health.

(Defendants' Exhibit No. 49)

(Ink notation)
M.E.F.#519
12/2/37.
H. R. Townsend

December 2, 1937.

Hon. R. N. Elliott, Acting Comptroller General of the United States, Washington, D. C.

DEAR MR. ELLIOTT:

In response to the request of your representatives, I have caused to be prepared certified copies of the action of the Board of Directors of Home Owners' Loan Corporation affecting its relationship with Group Health Association, Incorporated, which includes copy of the contract between Home Owners' Loan Corporation and Group Health Association, Incorporated. I attach also copy of the opinion of the General Counsel of the Corporation dated March 11, 1937, memorandum from him to Members of the Board and others dated December 28, 1936, and copy of an opinion and brief prepared by the legal staff, dated December 23, 1936.

I might add that the Director of Personnel of Home Owners' Loan Corporation made a study of the question of health conditions amongst its employees, including absences on account of illness, and conditions arising from indebtedness for doctors' and hospital bills, and advised the Board that heavy losses were resulting from the conditions existing and that it would contribute to the accomplishment of the purposes of the Corporation to provide medical examination upon employment and supervision of emergency rooms maintained by the Corporation and visiting nurse service maintained in connection with sick leaves, and to assist in preventing the conditions complained of. Upon those considerations and others, it was the opinion of the Board of Directors of Home Owners' Loan Corporation that the contract referred to should be entered into and the various adjustments made therein.

If we can furnish you further information in connection with this matter we shall be glad to do so.

Very truly yours, T. D. Webb, Vice Chairman.

HR E NM
Enc.

I hereby certify that the above is a true and correct copy of a carbon copy of a letter in the file of the Office of the Secretary, Home Owners' Loan Corporation.

J. Francis Moore, Secretary. (Seal.)

Home Owners' Loan Corporation
Washington

March 11, 1937.

Office of Horace Russell, General Counsel, Home Owners' Loan Corporation.

DEAR SIRS:

I attach a proposed resolution authorizing a contract between Home Owners' Loan Corporation and Group Health Association, Incorporated, copy of which proposed contract is attached.

In my opinion, Home Owners' Loan Corporation has legal power to adopt such resolution and enter into such contract, if in the opinion of the Board of Directors the service to be rendered under the contract and the benefits to flow from the arrangement are necessary for the most efficient operation of the Corporation for the accomplishment of its purposes, and if in the opinion of the Board of Directors the price paid is a reasonable price.

I supplied Members of the Board and certain executives with a memorandum on this subject and a copy of the brief of the law on December 28, 1936, which provide a more adequate discussion, if you desire it.

Very truly yours, Horace Russell, General Counsel.

Attach.

I hereby certify that the attached, consisting of nine (9) pages, is a true copy of the original memoranda and opinion on file in the office of the Secretary, Home Owners' Loan Corporation.

J. Francis Moore, Secretary, Home Owners' Loan Corporation.

Federal Home Loan Bank Board

Washington

Office of Horace Russell, General Counsel.

December 28, 1936.

Memorandum to: Members of the Board, Mr. R. R. Zimmerman, Mr. Charles A. Jones, Mr. Preston Delano, Mr. Nugent Fallon:

I attach for your information a brief on the question of the authority of the Federal Home Loan Bank Board and Home Owners' Loan Corporation to incur reasonable expenses in the encouragement of a Federal Credit Union amongst its employees and in the encouragement of the development of an organized medical service for the general benefit of its employees. The same rules of law apply to Federal Savings and Loan Insurance Corporation.

This matter has been carefully studied and we are of the opinion that in each case such reasonable expense may be incurred.

It is for the Board to determine in each case what is reasonable expense in this connection. I do not believe that it could be said that it would be reasonable expense to incur the total expense and provide completely a medical service, but on the other hand, it certainly would, in my opinion, be reasonable to incur the expense of investigating the question of an organized medical service and give advice and encouragement to the development of such, if, in the judgment of the Board, such development would promote the welfare of the establishment. How much further than the latter proposition would be reasonable is a matter for the exercise of the discretion of the Board.

In the case of a credit union, nominal space may be provided and all of the meetings of the union and all of its business may be transacted outside regular office hours, and it is clear that such would be justifiable. In some cases credit unions are being operated, I am informed, where the corporation, or establishment, or department, not only provides space, but provides such space during regular office hours and also provides personnel during regular office hours for the conduct of the business, and indeed, provides substantially for all expenses of the union. How much expense between these two extremes is reasonable and necessary for the welfare of the employees, and, therefore, of the establishment is a matter for the exercise of the discretion of the Board of Directors.

Horace Russell, General Counsel.

Attach.
cc—Briefs Section.
hr;enm;j

Legal Department Home Owners' Loan Corporation

Washington

December 23, 1936.

OPINION

Credit Union

Question.

The question has arisen as to whether the Federal Home Loan Bank Board and the Home Owners' Loan Corporation may incur expense for space and employees' time for the operation of a credit union, which is organized and operated for the general benefit and relief of employees.

A further question has arisen as to whether such expense may be incurred for space and employees' time for reasonable assistance in connection with the organization and operation of a medical service for the general benefit of employees.

Opinion.

Both questions are answered in the affirmative.

Discussion.

Section 19 of the Federal Home Loan Bank Act, as amended, provides in part as follows:

"The board shall have power to select, employ, and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary for the performance of its duties under this Act without regard to the provisions of other laws applicable to the employment or compensation of officers, employees, attorneys, and agents of the United States. * * * The board * * * shall determine its necessary expenditures under this Act and the manner in which they shall be incurred, allowed and paid. * * *"

This gives the Board broad authority to employ additional personnel and to incur necessary expenses in order to carry out the duties of the Board under the Act. Section 4(j) of Home Owners' Loan Act of 1933, as amended, provides in part, as follows:

The Corporation shall have power to select, employ, and fix the compensation of such officers, employees, attorneys;

or agents as shall be necessary for the performance of its duties under this Act, without regard to the provisions of other laws applicable to the employment or compensation of officers, employees, attorneys, or agents of the United States. * * * The Corporation shall be entitled to the free use of the United States mails for its official business in the same manner as the executive departments of the Government, and shall determine its necessary expenditures under this Act and the manner in which they shall be incurred, allowed, and paid, without regard to the provisions of any other law governing the expenditure of public funds. * * *"

The general rule is that corporations have those powers which are expressly granted in addition to those impliedly granted as reasonably incident and necessary to the carrying out of the powers expressly granted.

In McCulloch v. Maryland, (4 Wheat. 316), it is held that the word "necessary" is not to be given a narrow, restricted meaning.

In the case of Gilbert v. Norfolk & W. Ry. Co., (1933), 171 S. E. 814, Judge Kenna states in his opinion, as follows:

"Consistent with the general rule that a private business corporation is carried on primarily for the profit of the stockholders, and that therefore its charter powers and those of its board of directors must be exercised for that purpose, it has, nevertheless, been generally held that such corporations may, for the ultimate benefit of the corporation itself translated into profit, use the funds of such corporation for purposes which might appear directly to be charitable and humanitarian. It has been held that private corporations may take proper steps to insure adequate housing, school facilities, and churches; that they may supply medical attention for their employees, defray the expenses of taking care of injured employees, maintain benefit funds for sick and injured employees, and perform a variety of other acts which, upon their face, yield no direct return or benefit to the corporation and are in the nature of humanitarian grants to the employee. Without citing specific cases to maintain this general assertion, reference may be had for that purpose to the annotation following the case of Dodge v. Ford Motor Company, 3 A. L. R. 443 (case 204 Mich. 459, 170 N. W. 668, 3 A. L. R. 413). * * *"

In this annotation, 3 A. L. R. 443, at page 444, it is stated as follows:

"It is within the powers of a manufacturing corporation which has removed its plant to a sparsely settled locality, to purchase land in excess of its own needs, to make expenditures for streets and sewers, and a water supply therefor, to erect houses to be sold or rented to its employees, and to make contribution towards the establishment of a church, school, free library, and free baths, such a policy on its part reasonably tending to insure the continued and faithful service of a skilled and contented body of operators. Steinway v. Steinway & Sons, 1896, (17 Misc. 43, 40 N. Y. Supp. 718)."

Federal Credit Unions are organized under the Federal Credit Union Act (June 26, 1934, c. 750, sec. 1, 48 Stat. 1216), and in section 17 of said act are authorized to act as fiscal agents of the United States when requested so to do by the Secretary of the Treasury.

Credit unions are cooperative associations operating for the purpose of promoting thrift and of creating a source of credit for worthwhile purposes for its members. Through their operation saving is made easy and convenient. Credit unions are non-commercial in the sense that there are no promotional profits and that all investors share alike in proportion to the number of shares they own. The statute prescribes that membership is limited to persons having a common bond of occupation or association. Thus, the Washington Home Owners' Loan Corporation Federal Credit Union is exclusively for employees of the agencies under the Federal Home Loan Bank Board. A credit union now operates in each of the Regional Offices, the Richmond State Office and the San Antonio District Office. It is expected that each of the Home Owners' Loan Corporation's State Offices will soon have a credit union established. There are now upwards of 5,000 credit unions in the United States, of which 1,800 are under Federal charter and supervision as made possible by the Federal Credit Union Act.

It is assumed that in all cases where this question would arise the credit union is limited solely to the employees of the Federal Home Loan Bank Board agencies. R. N. Elliott, Acting Comptroller General of the United States, on November 3, 1936, held that in the absence of specific statu-

tory authority therefor, the Postmaster General may not lease or provide free of charge vacant space in Federal post office buildings to private parties, private enterprises or commercial concerns and that the two credit unions occupying space in the Post Office Building at Oakland, California, which were incorporated under the laws of the State of California were private enterprises.

As the credit unions are under the Federal Credit Union Act organized for the purpose of promoting thrift and creating a source of credit for its members who in the case of the Washington Home Owners' Loan Corporation Federal Credit Union are employees of agencies under the Federal Home Loan Bank Board, it seems that the Federal Home Loan Bank Board has authority under the act to incur expense for space and employees' time for the operation of a credit union which is organized and operated for the general benefit and relief of employees of agencies under it, and it also has authority under the act to incur expense for space and employees' time for reasonable assistance in connection with the organization and operation of a medical service for the general benefit of employees. The Home Owners' Loan Corporation has both authority under the act and implied authority as reasonably incident and necessary to the carrying out of the powers expressly granted in the act to incur expense for space and employees' time for the operation of a credit union which is organized and operated for the general benefit and relief of its employees and also to incur expense for space and employees' time for reasonable assistance in connection with the organization and relief of its employees and also to incur expense for space and employees' time for reasonable assistance in connection with the organization and operation of a medical service for the general benefit of its employees.

Opinion—Credit Union

Prepared by (s) Charles A. Barnard, Attorney.

Approved, (s) Kenneth G. Heisler, (s) Horace Russell.

December 23, 1936

Adm. Group Health, December 15, 1938

Mr. R. L. Nagle, Secretary
Federal Home Loan Bank Board
Washington, D. C.

DEAR MR. NAGLE:

The following comments are offered with respect to changes in the By-Laws of Group Health Association, Inc.

Mr. E. K. Neumann, of the Legal Department of Home Owners' Loan Corporation, who took charge of such litigation as the Association was obliged to engage in, urged the Board of Trustees not to alter the Association's structure as contained in the By-Laws other than changes made necessary by revision of rates. The Board of Trustees adhered to this request and Mr. Neumann has approved the changes embodied in the revised draft now before the Federal Home Loan Bank Board for approval. At the same time, in conversations with the Department of Justice, attorneys representing it indicated that it probably would be best not to make radical changes in our By-Laws until certain questions now before the courts concerning the Association had been settled. On advising the Department of Justice what we intended to do with respect to our rate structure, its representatives indicated their agreement.

The Advisory Council, consisting of approximately 51 persons, recommended to the Board of Trustees many other changes beyond what are contained in the present draft. These suggested changes were not adopted and are the ones that really reflect structural changes in the Association's set-up.

By reference to Article VIII on page 9 of the draft, you will observe that amendments to the By-Laws may be made by a two-thirds majority (8 members) of the Board of Trustees, at any regular or special meeting, with the exception that amendments to Article VIII and Section 7 of Article VII shall be made only after submission to and by

vote of members of the Corporation. The particular portion referring to submission of amendments to members is new matter in the present revision and, of course, is intended for action in the future and not in the past. Heretofore, amendments to the By-Laws as provided in Article IX, Section 1 of the By-Laws, as revised to October 25, 1937, contained the following:

"Sec. 1. Amendments to these by-laws may be made, by affirmative vote of a two-thirds majority of the Trustees of the corporation at any regular meeting or at any special meeting when the proposed amendment has been set out in the notice of such meeting."

Respectfully, (S.) W. C. Kirkpatrick, President.

cc: Mr. John H. Fahey, Chairman, Mr. T. D. Webb, Vice-Chairman, Mr. Fred W. Catlett, Board Member, Mr. William H. Husband, Board Member.

Copy

Memorandum

March 1, 1937.

To: Mr. Stevenson, Mr. Catlett, Dr. Hoagland, Mr. Russell.

From: R. R. Zimmerman, Group Health Association, Inc.

This is something of a prospectus of our proposed group health plan. Arrangements have been made for Mr. Rickcord of The Twentieth Century Fund, Inc., to discuss details of the plan with the Board at 10:30 o'clock, tomorrow morning. I am giving you this prospectus as you may have opportunity to sketch the material before the meeting.

R. R. Zimmerman.

Att.

I hereby certify that the above is a true and correct copy of an unsigned memorandum in the files of the Office of the Secretary, the original thereof not being in the files of the Secretary.

J. Francis Moore, Secretary.

March 15, 1941.

This is to certify that "prospectus" submitted under Item 2 of subpoena to the Home Owners' Loan Corpora-

tion is a photostat copy of the "prospectus" included in Minute Exhibit File Number 519 in the Office of the Secretary, Home Owners' Loan Corporation. This certification is made in lieu of submitting additional copy for the Minute Exhibit File.

J. Francis Moore, Secretary.

(Defendants' Exhibit No. 50)

Group Health Association, Inc.
For Employees of
Federal Home Loan Bank Board
And Affiliated Agencies.

Purpose

To bring the services of specially trained physicians and the benefits of modern medical equipment to people of average means, while preserving the personal relationship between patient and doctor.

Background

For some time, a group medical plan for employees of the Federal Home Loan Bank Board and its agencies has been studied. After extensive research followed by several preliminary meetings with some of our officials, a plan was created.

Mr. R. V. Rickcord of the Twentieth Century Fund, who is considered an authority in the field of group medicine, assisted materially in the formation of the plan. It was then presented to a meeting of about 1200 employees, the majority of whom indicated their interest in the proposal.

Since then over 800 employees have signed applications for membership and it is estimated 100 additional employees will desire to join as soon as the benefits are available.

Present Problem

The general health of our employees is a natural concern to Management from the standpoints of interrupted work and cost occasioned by lost time. It is estimated that absence from work caused by sickness costs the Federal Home Loan Bank Board and its agencies in excess of one-half million dollars annually.

Regular physical examinations with the opportunity of consulting competent physicians in whom employees have confidence and the knowledge that the doctor bills can be paid without hardship will lead to highly desirable preventive medicine and a reduction of sickness.

An analysis of money spent by the average person for medical treatment shows that only 2% goes for preventive purposes. A group medical service plan such as we contemplate will stimulate our employees to take proper steps to prevent illness.

The benefits of the plan are primarily for the employees of the Washington Office, but through action taken by the Medical Director, it is believed that similar benefits may be made available to our field employees, especially those in Regional Offices, by cooperating with similar groups in other cities.

There are at present 22 nurses in our employ assigned to the larger offices whose combined salaries total over $30,000. In addition, about $6,000 is spent annually for emergency room supplies and equipment.

While it is true these nurses work under local administrative supervision, they have no one to assist them in technical matters, health education, etc. Our Medical Director would work out many improvements in practice and procedure for the nurses and assist them in the matter of proper and adequate materials and increase the effectiveness of our emergency service.

The employment of persons physically unfit or with communicable diseases could be eliminated in the Home Office and in many of the large field offices where arrangements have been made with other medical groups by requiring a physical examination. Surely our employees should be protected by this precaution.

Facilities

Employees will elect a Board of Trustees who, in turn, will appoint a Medical Director and a Business Administrator. There would be assistants including physicians, technicians, nurses and clerical employees. Most of the service would be furnished at headquarters, suitably located in the downtown district of Washington, having the necessary consulting, examining and treatment rooms, and equipped

with apparatus and materials for extensive examination, diagnosis and treatment.

The medical benefits will include:

Consultations, treatments, analyses, X-Rays
Physical examinations
Surgery
Obstetrics
Hospitalization
Health education

Subscription Rates

Based on information secured from other groups which are furnishing these services, and the creation of an itemized budget of expenses, medical service would be furnished to members at the following rates:

For the individual	$2.20 per month
For the family	$3.30 per month

Drugs, medicines, biologicals, appliances and other materials would be procured upon prescription or special arrangements at reduced rates.

The Patient Speaks

The rich can buy the benefits of modern medical science. The very poor get these benefits in charitable or tax supported clinics. But most of us who work for a living and wish to pay for what we get cannot afford the full advantage of modern medicine.

When it comes to medical care, the best is none too good for anybody. I would like to have my private doctor, who knows me and understands my problems. But I would like to feel certain that my doctor never treats me for anything with which he is not completely familiar; I wish that he would never hesitate to call in a consultant. I would like to feel, too, that my doctor has at hand all of the modern apparatus necessary to aid him. I wish that X-Rays and laboratory tests were sufficiently inexpensive so that I could afford them whenever I need them.

When I get sick enough, the doctor sends me to a hospital where there are all kinds of equipment. But perhaps hospital bills could be avoided, and much sickness could

be prevented, if it were possible for me to take advantage of modern medical science even while I am well.

It would be perfect to have a doctor, and a staff of specialists, and a place where they have everything.

The Doctor Speaks

The doctor can choose between two alternatives: he can become a "family doctor" doing general practice, or he can specialize. The average family doctor collects from whomever he can and wishes he had more opportunity for advanced study. The specialist, if he practices alone, finds it necessary to ask high fees for his services, and has a tendency to lose intimate contact with other fields of medicine.

Medical research has made immense strides, but medical administration has been slow in bringing the results to the people. A doctor may live in a great medical center like Washington and yet be unable to take full advantage of all the modern advances in diagnosis. We ought to have all the technical and laboratory services close at hand, and so moderately priced that we could use them without hesitation for our patients.

A perfect way to practice would be to have my own patients whose personal problems I know, and to be so situated that the factor of expense would never make it impossible for me to call in consulting physicians when they are needed. It would be fine to work in daily contact with a group of physicians. In this way my medical knowledge would be continually enriched and co-ordinated with other fields of medicine. Does this ideal have to remain a dream; can it not be accomplished by our organizing and co-operating?

What Is Group Medicine?

Medical care of a high quality has been made possible by recent scientific advances. The means used to distribute medical service to the public sometimes fail to keep pace with the development of medical knowledge. As this knowledge has advanced, new fields of specialization, and new accessories to diagnosis and treatment of disease have developed. "Group medicine" is a method of co-operative practice which brings together under one roof a number of physicians, the modern devices, and the technical assist-

ants required for complete medical care. Every patient of the group of co-operating physicians and surgeons has not only the services of his own doctor, but also the attention of a large group of doctors.

Besides making complete modern medical care available to its patients, group medical practice results in a great decrease in the expense of this care. Shared overhead, co-operative utilization of costly equipment, and completely organized technical help servicing a large number of physicians, greatly lower the cost to the patient.

Thoroughness Is the Keynote of Group Medical Service

Complete Analytical Diagnostic Study: When it is deemed advisable by the attending physician; patients are given a complete analytical diagnostic study in which all the resources of modern medicine are utilized.

After a thorough general medical examination, careful studies are made in all the special departments. In every case the following laboratory tests are performed: urinalysis, blood counts, serological tests, electrocardiogram, X-Rays of the teeth, heart and lungs, abdomen, gall-bladder, and a fluoroscopic study of the entire gastro-intestinal tract.

When further information is desired, additional laboratory tests and X-Ray studies are made. These include examination of stomach contents, feces, spinal fluid, special blood tests, basal metabolism, X-Ray of the bones, joints, sinuses, etc. Such an examination is possible at the Group Health Association because of the co-ordinated functioning of its many departments, and its complete equipment.

The constant co-operation between the physicians studying a case assures every patient that interrelated facts will be properly observed and that an adequate program of treatment will be instituted. The rational and efficient method of administering this service at the Group makes it available to thousands to whom it has previously been an inaccessible luxury.

A Complete Eye Service Assures Thorough Examination and Correct Glasses

Eyestrain causes headaches, nervousness, and tiredness, and always leads to a further impairment of vision. Certain disorders of the body are due to eyestrain, and can be

cured by properly fitted glasses. It is found frequently, on the other hand, that persons are wearing glasses unnecessarily, and that their eye disorder is due to disease in another portion of the body.

In the eye department at the Association the eyes are carefully examined by a specialist. Such conditions as conjunctivitis, styes, ulcers, cataracts, and glaucoma are readily diagnosed and treated here. Vision is thoroughly tested, and when necessary correct glasses are prescribed.

Complete Maternity Care

Complete medical service is available to expectant mothers including prenatal examinations, hospitalization, delivery and post-partum care. Here any woman may feel confident that she is obtaining the best of care throughout the entire period of her pregnancy.

Proper Care of Children in Babyhood Helps Assure A Healthy Life

Pediatrics: Perhaps no other single factor is so important in assuring life-long good health as proper medical attention during childhood. Working out proper feeding formulae for infants and watching over the first months of their lives are important factors. A child should be watched carefully for the first sign of heart, allergic, or glandular disturbances which, if neglected, often result in permanent invalidism.

Modern immunization procedures for children, protecting them against smallpox, dipthheria, scarlet fever, and whooping-cough will also be available. These children's diseases need the attention of a trained physician to prevent possible serious consequences.

Surgery

In no single field has more progress been made during the last fifty years than that of surgery. And yet, in no single field are the costs of adequate care so prohibitive. To the fees of the surgeon, often in itself a serious burden, are added the expenses of hospitalization, anesthesia, drugs and the use of the operating room.

These prohibitive costs are responsible every year for innumerable deaths which could have been prevented by

timely surgery, particularly in such conditions as appendicitis, intestinal obstructions and early cancer. The services of our surgeon are available for the removal of tonsils and adenoids, appendix, gall bladders, goitre operations and other similar operations.

Hospitalization

Hospitalization will be provided to patients as recommended by the Medical Director or staff physician. All of the facilities necessary for the comfort and safety of the sick are at the command of our physicians.

In the event of accidents or sudden illness ambulance service is ready at all times without a charge to the patient.

Men and Machines

In the early days of medicine a stethoscope and a clinical thermometer were about the only mechanical aids available to the physician. But as medicine marches on, intricate machines are developed to aid man in his battle with disease and death. These complicated instruments, used chiefly in diagnosis, are often beyond the means of the average practitioner. Even if he could afford them a doctor practicing by himself might use them so infrequently as to make their maintenance a prohibitive expense. Yet, when the need arises, it is imperative that he have it.

But a group of physicians practicing together can own and make use of all the costly equipment so necessary to diagnosis and treatment. They can give their patients the benefits of these technical facilities at a fraction of the ordinary cost.

In the field of diagnosis X-Rays find their greatest value in the early detection of disease. Tuberculosis of the lungs may be discovered by X-Ray studies of the chest at an early stage, when direct examination by a thoroughly competent physician may fail to disclose it. The use of these valuable diagnostic aids results in a decrease of suffering and in a prolongation of life. Nevertheless, advantage is not always taken of this valuable aid in the study of disease because of its expense.

Estimated Budget

Technical Staff		
Medical Director (surgeon)	$ 7,500	
Special Nursing	2,000	
Hospitalization	7,500	
Physicians, four	18,000	
Nurses, two, for laboratory, physiotherapy, X-Ray and office services	3,600	
Clerical and Cleaning	1,400	$40,000
Technical Services		
*Medical Equipment	$ 2,000	
Interest Charges (yearly aver. at 5%)	200	
Depreciation	1,200	
Drugs and Material, clinical	1,000	
Ambulance	200	4,600
Office Expenses		
Rental	$ 2,000	
Office Equipment	400	
Light, Telephone, Janitor and other Utility services	1,000	
Office Supplies	300	
Laundry	200	
Insurance	1,000	4,900
		$49,500
Analysis		
900 Members would pay	30,888	
Deficit		$18,612
**834 Members would pay	$28,234.80	
Deficit		$21,265.20

When the plan is put into effect, it is conservatively estimated that membership will aggregate between 834 and 900, indicating a mean deficit of about $20,000.

It is therefore recommended that the Board assist the enterprise to the extent of $20,000 during its early existence.

*Total $10,000 to be paid for on five-year basis.

**Number of signed applications in hand.

(Defendants' Exhibit 50-A)

Whereas, Home Owners' Loan Corporation desires to provide physical examination of applicants for employment, before employment, supervision of its present provisions for emergency treatment, and to cooperate in providing a substantially complete medical and hospital service to its employees and their families, all in the interest of the acquisition and maintenance of the highest possible type of personnel, which in the judgment of the Corporation is necessary for the accomplishment of the purposes of the Corporation, and

Whereas, Group Health Association, Incorporated, has been formed by certain employees of the Corporation to provide a substantially complete medical and hospital service, which is in position to provide the service the Corporation requires, therefore, it is agreed as follows:

1. Group Health Association, Incorporated, agrees to provide a staff and service to provide a substantially complete medical and hospital service to employees of the Home Owners' Loan Corporation who are its members on substantially the basis outlined in the memorandum submitted to the Members of the Board by Mr. R. R. Zimmerman, dated March 1, 1937.

2. Group Health Association, Incorporated, further agrees to provide at its headquarters at the request of the Home Owners' Loan Corporation physical examinations at the time of employment of all new employees in the Washington office.

3. Group Health Association, Incorporated, shall be required and agrees to manage and supervise the emergency rooms and the employees in the nursing service maintained in connection with such emergency treatment and in visitations to employees of the Washington office who are on sick leave.

4. Group Health Association, Incorporated, further agrees to provide bylaws satisfactory to the Corporation and to provide in its bylaws for two of its directors to be

elected from nominations made by the Federal Home Loan Bank Board, who shall be members of an executive committee of five.

5. In consideration of the foregoing, and all of the benefits to flow to the Home Owners' Loan Corporation, as a result of the operation of Group Health Association, Incorporated, Home Owners' Loan Corporation agrees to pay $10,000 upon request, and beginning on the date of the establishment of its service the sum of $833.33 monthly in advance for a period of twelve months, and thereafter the sum of $1,666.67 per month for the succeeding twelve months.

6. It is further agreed that this contract shall remain in full force and effect for a period of two years from the date of the establishment of its service by the Group Health Association, Incorporated.

Authorized, entered into, executed and delivered by both parties as of the 22nd day of March, 1937.

Home Owners' Loan Corporation. By John H. Fahey, Chairman, Board of Directors. Group Health Association, Inc. By W. F. Penniman, President.

M.E.F. #519, 2/23/38. H. R. Townsend, p. 8423.

Contract

Whereas on March 22, 1937, a contract was entered into between the undersigned Home Owners' Loan Corporation and Group Health Association, Incorporated, and

Whereas since said date Group Health Association, Incorporated, has completed its organization, has established its clinic, and is now prepared to provide, and is providing, on a reasonable monthly prepayment basis, a group medical and hospitalization service which is of direct and indirect benefit to the Home Owners' Loan Corporation in providing such of its employees as desire to join the Group Health Association the opportunity to secure, on such reasonable monthly prepayment basis, medical service, preventive as well as curative, and hospitalization, and

Whereas since the execution of such contract certain of its provisions have already been performed, and certain

changes have occurred which make it desirable to simplify and adjust the terms of the contract referred to;

Therefore It Is Agreed by and between the Home Owners' Loan Corporation and Group Health Association, Incorporated, that Group Health Association, Incorporated, shall, for a period of at least two years from November 1, 1937, operate its clinic and provide substantially complete medical and hospital service to such employees of the Home Owners' Loan Corporation as care to join it on a reasonable monthly prepayment basis, and that it continue to maintain the high standard professional service it now affords, all in accordance with its character and under by-laws satisfactory to the Corporation.

In Consideration of the benefits already received and to be received during the period of this contract, the Home Owners' Loan Corporation has paid to Group Health Association, Incorporated, the full amount provided in the contract referred to, and the receipt of such sum in full of all obligations of the Home Owners' Loan Corporation is hereby acknowledged.

Executed And Delivered this the 23d day of February, 1938.

Home Owners' Loan Corporation. By John F. Fahey, Chairman; R. L. Nagle, Secretary. Group Health Association, Incorporated. By Ormond E. Loomis, Vice President. (Seal.)

Home Owners' Loan Corporation

Memo

To: Mr. T. D. Webb.
From: R. R. Zimmerman.
Date: March 9, 1937.
Subject: Nominees for Board of Trustees of Group Health Association.

I thought the Board would be interested in knowing the names of those nominated by the Nominating Committee,

from which eleven members of the Board of Trustees for the Group Health Association will be elected.

(S.) R. R. Zimmerman.

Attachment: List of Nominees.

I hereby certify that the above is a true and correct copy of an original copy of a memorandum on file in the Office of the Secretary, Home Owners' Loan Corporation. (S.) J. Francis Moore, Secretary. (Seal.)

Nominees

Name	Department
Ormond Loomis	Board
R. T. Berry	General Manager
W. F. Penniman	Assistant General Mgr.
Mrs. Pearl B. Murphy	Examining Division
Horace Russell	Legal
Wilbert Thompson	Legal
William Prigg	Auditing
Tom Daly	Auditing
Charles D. Otterson	Personnel
L. E. Ring	Loan Service
Mrs. Helen Andrews	General Manager, Correspondence Section
Ivan Carson	Property Management
Tom Klechak	HOLC Comptroller
Mabel Hanson	HOLC Comptroller, Purchase and Supply
George Hubbell	Reconditioning
H. R. Townsend	Secretary
C. K. Berlin	FHLBB Comptroller
Loretta White	Public Relations
Ralph Weese	Research and Statistics

March 9, 1937.

I hereby certify that this is a true and correct copy of an original on file in the Office of the Secretary, Home Owners' Loan Corporation. J. Francis Moore, Secretary. (Seal.)

Group Health Association, Inc., Washington, D. C.

March 22, 1937.

The Federal Home Loan Bank Board, New Post Office Building, Washington, D. C.

GENTLEMEN:

In accordance with the terms of the contract by and between the Group Health Association, Inc., and the Home Owners' Loan Corporation, approved at a meeting of the Federal Home Loan Bank Board, held on March 17, 1937, it is provided, among other things, that two of the Trustees of the Group Health Association, Inc., shall be elected from nominations made by the Federal Home Loan Bank Board, who shall be members of an Executive Committee of five.

It is respectfully requested, that in compliance therewith the Federal Home Loan Bank Board furnish the Group Health Association, Inc., with the names of those it desires to be placed on the ballot. If agreeable to the Federal Home Loan Bank Board, it would be preferable to provide the names of four candidates which will be grouped separately on the ballot and instructions given to vote for two.

Very truly yours, Group Health Association, Inc.
By W. F. Penniman, President Pro Tempore.

(Memo. in handwriting in right-hand margin: Ballard substituted for Wilson subsequently. H.R.T. 10/11/38)

(Memo. in handwriting on bottom of letter: Board of Directors nominated only two—A. S. R. Wilson and W. C. Kirkpatrick—3/22/37. (See P. 6837 HOLC Minutes) Penniman notified. H. R. Townsend)

(Minute Exhibit File No. 519, Home Owners' Loan Corporation, March 22, 1937)

(Copy)

Group Health Association, Inc., Washington, D. C.

March 22, 1937.

The Federal Home Loan Bank Board, New Post Office Building, Washington, D. C.

GENTLEMEN:

In accordance with the terms of the contract by and between the Group Health Association, Inc., and the Home

Owners' Loan Corporation, approved at a meeting of the Federal Home Loan Bank Board, held on March 17, 1937, it is provided, among other things, that two of the Trustees of the Group Health Association, Inc., shall be elected from nominations made by the Federal Home Loan Bank Board, who shall be members of an Executive Committee of five.

It is respectfully requested, that in compliance therewith the Federal Home Loan Bank Board furnish the Group Health Association, Inc., with the names of those it desires to be placed on the ballot. If agreeable to the Federal Home Loan Bank Board, it would be preferable to provide the name of four candidates which will be grouped separately on the ballot and instructions given to vote for two.

Very truly yours, Group Health Association, Inc.
By (S.) W. F. Penniman, President Pro Tempore.

(Board of Directors nominated only two—A. S. R. Wilson and W. C. Kirkpatrick—3/22/37.)

Penniman notified.

(S.) H. R. Townsend.

November 16, 1937.

Federal Home Loan Bank Board

DEAR SIRS:

I find that Group Health Association, Incorporated, has agreed to submit any amendment of its bylaws to the Federal Home Loan Bank Board for approval, and the attached amended bylaws are submitted for such approval.

The bylaws were amended by re-enactment in the attached form. Such amendment was necessitated to strengthen the legal position of the association. The original bylaws provided for payment of cash indemnities upon certain contingencies, such as hospitalization outside of the area of its operations, and such provision would have made it an insurance organization. These revised bylaws provide for it to secure doctors and provide hospital rooms and service for members to the extent of its available funds as limited in the bylaws, but do not provide for the payment of any cash indemnity at all. There is no change of substance but merely a change of the legal nature of the contract in this respect. The original bylaws permitted membership after separation from the Federal service. This

revision excludes membership except in the case of employees of the executive branch of the Government, excluding the Army and the Navy, and this provision is made to assure us the benefit of an exception from insurance regulations, if we are held to be an insurance company.

While there are changes at a number of places in the bylaws, all of these are intended to strengthen the legal position of the association, and none of them seem to the Board of Trustees to be of any substance. The Federal Home Loan Bank Board is requested officially to approve the revised bylaws.

Very truly yours, Horace Russell, General Counsel.

Approved by Board November 19, 1937.
(s) H. R. Townsend, Assistant Secretary. (Seal.)

I hereby certify that the above is a true and correct copy of a letter with the original signature of H. R. Townsend thereon.

J. Francis Moore, Secretary.

Exact Copy

(Ink Notation) M. E. F. #519, 12/2/37.
H. R. Townsend.

December 2, 1937.

Hon. R. N. Elliott,
Acting Comptroller General of the United States,
Washington, D. C.

Dear Mr. Elliott:

In response to the request of your representatives, I have caused to be prepared certified copies of the action of the Board of Directors of Home Owners' Loan Corporation affecting its relationship with Group Health Association, Incorporated, which includes copy of the contract between Home Owners' Loan Corporation and Group Health Association, Incorporated. I attach also copy of the opinion of the General Counsel of the Corporation dated March 11, 1937, memorandum from him to Members of the Board and others dated December 28, 1936, and copy of an opinion and brief prepared by the legal staff, dated December 23, 1936.

I might add that the Director of Personnel of Home Owners' Loan Corporation made a study of the question of health conditions amongst its employees, including absences on account of illness, and conditions arising from indebtedness for doctors' and hospital bills, and advised the Board that heavy losses were resulting from the conditions existing and that it would contribute to the accomplishment of the purposes of the Corporation to provide medical examination upon employment and supervision of emergency rooms maintained by the Corporation and visiting nurse service maintained in connection with sick leave, and to assist in preventing the conditions complained of. Upon these considerations and others, it was the opinion of the Board of Directors of Home Owners' Loan Corporation that the contract referred to should be entered into and the various adjustments made therein.

If we can furnish you further information in connection with this matter we shall be glad to do so.

Very truly yours, T. D. Webb, Vice Chairman. (Seal.)

HR. E. NM
Enc.

I hereby certify that the above is a true and correct copy of a carbon copy of a letter in the file of the Office of the Secretary, Home Owners' Loan Corporation.

(Signed) J. Francis Moore, Secretary.

I hereby certify that the attached, consisting of two pages is a true copy of the carbon copy of a statement entitled

"Accounts Receivable

Purchase & Supply Section

Group Health Association, Inc.

Outstanding to April 30, 1938"

on file in the Office of the Secretary, Home Owners' Loan Corporation.

(Signed) J. Francis Moore, Secretary. (Seal.)

Exact Copy

(Ink Notation) M. E. F. #519, 5/18/38.
H. R. Townsend, p. 8632.

Accounts Receivable

Purchase & Supply Section

Group Health Association, Inc.

Outstanding to April 30, 1938

Bulletin Board—Dec. 10, 1937—Constructed by the Carpenter—$2.50.

Duplicating Services:

For	Req. No.	Job No.	Date Finished	
Mr. Berry	–	4-261	4-16 (1937)*	26 70
Mr. Penniman	–	4-317	4-22	1 77
Mr. Berry	–	4-475	4-29	1 91
Mr. Penniman	A-40808	7-355	7-29	16 07
Mr. Penniman	A-41702	8-65	8-3	8 86
Group Health	–	8-458	8-31	42 55
Mr. South	A-44160	9-147	9-9	5 24
Room 522	A-46309	9-418	9-23	3 80
Group Health	A-44618	9-178	11-15	308 00
Mr. Berry	A-51805	11-251	11-18	1 95
Mr. Berry	A-54378	12-281	12-15	2 39
Mr. Berry	A-55374	12-556	12-29	1 96
Room 327	A-53420	12-150	1-27 (1938)*	6 33
Room 327	A-53420	12-151	1-28	12 07
	Total			442 10

( )* Ink notation on original copy.

Job. No.		
4-261	Letters, notices, ballots, and envelopes	$26 70
4-317	Letters	1 77
4-475	Letter	1 91
7-355	Memorandum and article, "Have you Paid Your Doctor"	16 07
8-65	Building Plan	8 86
8-458	Miscellaneous duplicating services	42 55
9-147	General conditions of specifications of medical clinic	5 24
9-418	Photostat copies showing lighting fixtures	3 80
9-178	Forms, blanks, pads, reports, instructions, etc., for use in clinic	308 00
11-251	Assignment forms	1 95
12-281	Hour change notices	2 39
12-556	Legal brief	1 96
12-150	Statement form	6 33
12-151	Purchase order forms	12 07

I hereby certify that the attached, consisting of HOLC Form 629, dated April 21, 1938, consisting of one page, two sides, is a true and correct copy of such form, with spaces

filled in with typewriter and by ditto process, on file in the office of the Secretary, Home Owners' Loan Corporation. Also, that the letter from W. C. Kirkpatrick to Mr. R. L. Nagle, dated May 11, 1938 and attached, is a true and correct copy of a carbon copy of a letter on file in the office of the Secretary, Home Owners' Loan Corporation.

(Signed) J. Francis Moore, Secretary. (Seal.)

Home Owners' Loan Corporation

Exact Copy

"M. E. F. #519, Reso. 5/16/38.
H. R. Townsend, p. 8624.

(Office) Home office.
FHLBB Building
Washington, D. C.

*Ink notation on original copy.

(Date) April 21, 1938.

Invitation To Bid
(Sale of Non-Expendable Property)

The Home Owners' Loan Corporation proposed to sell to the highest bidder, Corporation-owned furniture as listed below. You are invited to inspect this equipment and submit your quotation to the above office not later than Monday, April 25, 1938, at 11:00 A. M., at which time all bids will be opened. Place your bid in the bidder's price column.

To be filled in before submission to bidder.

Article	HOLC tag No.	Type	Size	Material	Bidder's Price	To be filled in after return from bidder: Voucher or P.O. No.	Voucher or P.O. Price	Remarks
23 Chairs—Tube Steel 856—Tag 108663354 3803 870 1225 6322 853 1815 1007 8483 Tag—3752 Tag—10407 692 6388 6332 4599 541 1907 558 8487 1151 2715								
2 Chairs—Typist 8727 (Tag 88-49A)								
1 Chair—Swivel—Walnut Wood W/A 2319								

1 Chair—Side—Walnut Steel—General
Fireproofing Tag—2043
1 Typewriter—Underwood Nsls. #3905979
1 Typewriter—Underwood Std. #4446177
1 Typewriter—L. C. Smith #1068869
1 Desk—60" Sec. Walnut Steel—2681
1 Desk—60" Flat Top—Walnut Steel—2683
6 Fans—General Electric S—47744 S—57013
S—51227 S—56492 S—46191 S—49858
2 Files—4 Drawer Letter—G. S. 8707 409-9R
1 Clock—Electric Wall HOLC 35-23A
1 Infra-Red Lamp (Gibson 202)
1 Table 60" G. S. 5133
1 Table 50" 6403 G. S.
1 Table 36" Typist 7513
1 Table 36" Typist 3 drawers Drop Leaf
Oak 23925
1 Desk 45" Type. Green Steel #10716

This equipment can be seen on the Second Floor at 1328 Eye Street, N. W. between 6:30 and 7:30 P. M. April 22, 1938.

If my bid is accepted, I shall make payment of the proposed purchase price in full, in the form of certified check, Cashier's check, or Postal Money Order, made payable to the Treasurer of the Home Owners' Loan Corporation. Upon payment, the title of the furniture passes to me, and any handling thereof and thereafter will be made at my risk. I also understand that final approval of the Washington Office of the Home Owners' Loan Corporation must be secured before my bid can be accepted, and that the right is reserved to reject any and all bids.

Signed:

_____ _____

Address Firm Name

_____ By _____

Telephone No. Title or Position

Group Health Association, Inc.

Washington, D. C.

May 11, 1938.

To: Mr. R. L. Nagle, Secretary HOLC

From: W. C. Kirkpatrick

Re: Sale of Surplus Furniture to GHA by HOLC

I am in receipt of a copy of a memorandum from Mr. H. Caulsen, Assistant Secretary, addressed to Mr. D. C. Hair and the writer, under date of May 10, relative to the subject captioned above. Attached to this memorandum is a copy of Mr. Russell's opinion, under date of May 9, to the Corporation, in which he indicates that the furniture in question may be sold to this Association if the Board of Directors of the Home Owners' Loan Corporation deems it advisable.

I shall appreciate it if you will advise me as to whether or not the Board is willing to sell the furniture in question to this Association at a total cost of $300.00 (all furniture now in place at the clinic, 1328 Eye Street, N. W.) on terms which will enable the Association to pay for such furniture at the rate of $20.00 per month. I understand there are one or two typewriters, or possibly three, included in the list of furniture at the clinic which are of very little use because of their condition. It may be necessary that some adjustment will have to be made in connection with these typewriters.

I shall appreciate, however, hearing from you after you have consulted with the Board on this question.

W. C. Kirkpatrick, President.

WCK:BJ

#519

"The Board of Directors approved proposed amendments to Sections 4, 5 and 7 of Article II, Section 6 of Article III, Sections 5 and 6 of Article IV and Sections 1, 2, 3, 4, 6 and 7 of Article X of the by-laws of Group Health Association, Inc. as presented by said Association. A copy of the proposed amendments will be found in Minute Exhibit File #519."

I hereby certify that the above is a true excerpt from the Minutes of a Meeting of the Board of Directors of the Home Owners' Loan Corporation held on May 2, 1938.

(Sgd.) H. R. Townsend, Assistant Secretary.

(Pencil Notation M.E.F. #519 5/2/38. H. R. Townsend p. 8587.

Mr. E. K. Neumann
Horace Russell

(Copy)

I have your memorandum of April 19, 1938, in reference to Group Health Association by-laws and see no objection to the proposed amendments.

I suggest that you check this matter with Mr. Kenneth G. Heisler who has worked on the question before and put the matter, which in your opinion should be acted upon by the Board of Trustees, in proper form for action and discuss it with the president and go before the Board of Trustees and ask for such action as you advise. I believe the Board meets next Monday.

(Signed) Horace Russell, General Counsel.

Attach.

To the Federal Home Loan Bank Board:

The Conference above suggested was held, resulting in changes as outlined.

(Signed) A. Blaine York, Counsel.

April 27, 1938.

Federal Home Loan Bank Board.
W. C. Kirkpatrick.

April 28, 1938.

Amendment of By-Laws G. H. A.

Counsel for Group Health Association have found that the following amendments to its by-laws will relieve it of some rather embarrassing moments in disposing of the case of G. H. A. vs. U. S. Attorney and others now pending in the U. S. Court for the District of Columbia. None of the changes go far beyond the process of so revamping the language as to better meet the legal questions raised. It is hoped you will not find the changes objectionable.

(1) Amend Section 4 of Article II to read as follows:

"Dependents of *those* hereafter becoming members of this corporation will not be eligible *to the benefits of this corpo-*

ration until the member has been in good standing for a period of three calendar months, beginning with the date of his or her application, provided, however, that this section shall not apply to dependents of members in good standing as of the date of beginning *operations.*

"Employees who do not apply for membership within one calendar month from the date of entrance on duty in the government service aforesaid shall not be *eligible to the benefits of this corporation* until three calendar months after the date of their application, *during which three months, however, no dues shall be paid by or be chargeable to such applicants.*"

(2) Amend Section 5 of Article II to read as follows:

"The Board of Trustees shall reject an application for membership without cause if the applicant is not an employee of the character hereinabove designated. It shall have the right, for just and reasonable cause, to reject *any* application for membership, and may drop or expel *from membership, after not less that fifteen (15) days notice and hearing before the Board of Trustees, any person who, in the opinion of said Board of Trustees, shall have abused the privileges of his membership or is otherwise guilty of wrongful conduct detrimental to the corporation or its membership.* The Board of Trustees, after hearing as hereinbefore provided, shall be the sole judge of whether the conduct in question warrants expulsion from membership. *Membership dues shall end upon expulsion.*"

(3) Amend Section 7 of Article II to read as follows:

"No dependent of a member not listed on the dependent list of such member at the time he becomes a member shall be eligible for benefits hereunder until the expiration of three calendar months after such dependent is placed on the dependent list of such member, with the exception of newly married wives or husbands, or newly born children, who shall be eligible for such benefits from the date of listing provided such listing is made not later than one calendar month after such marriage or birth. No dependent in any case shall be eligible for benefits at a time when the member himself is not so eligible."

(4) Amend Section 6 of Article III to read as follows:

"Every member shall have the right to vote, in person or by proxy, in any election or at any meeting of the *corporation.*"

(5) Amend Section 5 of Article V to read as follows:

"*The Board of Trustees shall contract for and in behalf of the members of this corporation, with physicians duly licensed to practice their profession in the District of Columbia, who shall render such service to the members as may be provided in said contract. One of said physicians shall be designated as the Medical Director, who, with the approval of the Trustees, may engage the services of such assistants, orderlies, nurses, or other help, in order to properly render the services contracted for.*

(6) Substitute the following in lieu of Section 6, Article V, to-wit:

"*The Board of Trustees shall in no way regulate or supervise the practice of medicine by any physician with whom it contracts for the care of members nor shall it in any way supervise, regulate or interfere with the usual professional relationship between such physician and his patient member, and every such contract entered into by and between a physician and the corporation shall contain a positive covenant to that effect.*

(7) Amend Section 1 of Article X to read as follows:

"*The contract or contracts to be made by this corporation on behalf of the members thereof with physicians, as provided in Section 5 of Article V, or with others, shall provide for the following services to members:*

"Medical and surgical examinations and treatments, including examinations in special departments, such as refractions of eyes, laboratory tests, x-ray examinations; surgical operations, confinement cases, and professional consultations, nursing and ambulance facilities, house calls, and hospitalization in a semi-private room (two-bed room) or a private room, limited in either case to a period not to exceed 21 days for any one illness; provided, however, that each member desiring to occupy a private room or a semi-private room of his own choice shall pay so much of the cost

of such room as shall exceed the sum of $4.00 per day; provided, further, that such member shall make such advance payments to assure the aforesaid reimbursement as the Trustees shall require; and provided, further, that the benefits provided outside of the territory of the association shall be limited to the provision of a hospital room for the time and as is herein provided.

"*Members or dependents in order to avail themselves of medical and surgical service shall come to the doctor's office if such is possible from the nature of their illness. Doctors will answer necessary house calls within a radius of ten miles from the District of Columbia line, except that the Medical Director may provide for house calls not exceeding twenty miles. Members will furnish such doctor with any information he may request relative to their condition and membership and should, at all times, have available their membership card for identification.*

"The extent that medical service relating to the foregoing items will be furnished to members shall be determined and prescribed by the Medical Director or his representatives in each individual case."

(8) Amend Section 2 of Article X to read as follows:

"The contract or contracts to be made by this corporation on behalf of the members, with physicians, as provided in Section 5 of Article V of these By-Laws, or with others, shall not provide for the following services to members:

(1) Treatment of industrial accident cases;
(2) Surgery of the brain or nervous system;
(3) Any treatment after the time that the Medical Director recommends commitment to an institution in mental, tubercular, drug or alcohol addiction cases.

(9) Amend Section 3 of Article X to read as follows:

"*Any contract entered into by the corporation on behalf of its members will require the members to pay for the following:*

(1) Medicines, drugs, surgical appliances, such as orthopedic devices and crutches; eye glasses; artificial limbs or eyes; and hearing devices;
(2) Radium and deep x-ray treatments;
(3) Dental work;

(4) Oxygen tanks or tents and materials;
(5) Blood transfusions;
(6) Special nursing service if not ordered by the Medical Director;
(7) Treatment, services, supplies and other items prescribed or ordered by a physician not in a contractual relationship with the corporation and its member, but employed by an individual member, including fees of such physician.
(8) Treatment of venereal diseases at the rate of Fifty Cents (50¢) per treatment.
(9) Hospitalization in excess of that mentioned in Section 1 of this article.

"The corporation shall make an effort to secure at reduced rates all the medical services and items for which the member is required to pay."

(10) That the following be adopted in lieu of Section 4 of Article X, as follows, to-wit:

"Section 4 (a) *The corporation does not guarantee that it will provide any or all of the services above specified and for which it will attempt to contract on behalf of its members and it shall not be liable to any member or his dependent in any manner whatever if it should for any reason, including lack of funds, be unable to procure any or all of said services when called upon to do so.*

"(b) *The corporation does not guarantee that any physician or physicians with whom it may enter into a contract to render services to its members will perform such contract and its only obligation in the event of the breach of such contract by any physician shall be to use its best effort to procure the needed services from another source.*

"(c) *The corporation shall not be liable to its members or their dependents for any act of omission or commission on the part of physicians or other persons with whom it may contract for the rendition of services to its members and their dependents.*

(11) That Section 6 of Article X be amended to read as follows:

"Any person referred to herein as dependent, to be eligible to the benefits of the corporation, must be totally dependent upon a member of the corporation for a livelihood

prior to and at the time of such person's disability and prior to and at the time of need of medical service. Under this provision persons who are regularly working and receiving compensation for their services are not dependent, with the exception that wife or husband, or school children who work during the summer months only, may be considered dependent. Any member who accepts benefits hereunder to which he is not entitled, or who secures such benefits for any person not entitled thereto, *shall pay a penalty commensurate with the value of the services so received as may be determined by the Board of Trustees.*"

(12) Repeal all of Section 7 of Article X.

Respectfully W. C. Kirkpatrick, President.

Approved: —— ——, Chairman; —— ——, Vice-Chairman.

The defendants re-offered portions of the records of the Twentieth Century Fund, the Good Will Fund and the Joint Committee of the Twentieth Century Fund and the Good Will Fund marked Def. Exs. 41, 40, 39, 38, 31, 32, 33, 34, 35, 36, and 37, all of which are set out in defendant's offer of proof, page 1011-1025 supra.

The defendants supplemented the offers of proof previously made and in connection therewith offered the letter of Comptroller General Elliott to Senator McCarran dated December 16, 1937, and the exhibits thereto annexed marked Def. Ex. 22. This exhibit, except enclosures, is identical in words and figures with the letter heretofore set forth under the offer of proof made during the testimony of Dr. Woodward marked Def. Ex. 30, pages 910-920 supra.

The enclosures read as follows:

(Exhibit A)

December 28, 1936.

Memorandum to:

Members of the Board, Mr. R. R. Zimmerman, Mr. Charles A. Jones, Mr. Preston Delano, Mr. Nugent Fallon.

I attach for your information a brief on the question of the authority of the Federal Home Loan Bank Board and Home Owners' Loan Corporation to incur reasonable

expenses in the encouragement of a Federal Credit Union amongst its employees and in the encouragement of the development of an organized medical service for the general benefit of its employees. The same rules of law apply to Federal Savings and Loan Insurance Corporation.

This matter has been carefully studied and we are of the opinion that in each case such reasonable expense may be incurred.

It is for the Board to determine in each case what is reasonable expense in this connection. I do not believe that it could be said that it would be reasonable expense to incur the total expense and provide completely a medical service, but on the other hand, it certainly would, in my opinion, be reasonable to incur the expense of investigating and the question of an organized medical service and give advice and encouragement to the development of such, if, in the judgment of the Board, such development would promote the welfare of the establishment. How much further than the latter proposition would be reasonable is a matter for the exercise of the discretion of the Board.

In the case of a credit union, nominal space may be provided and all of the meetings of the union and all of its business may be transacted outside regular office hours, and it is clear that such would be justifiable. In some cases credit unions are being operated, I am informed, where the corporation, or establishment, or department, not only provides space, but provides such space during regular office hours and also provides personnel during regular office hours for the conduct of the business, and indeed, provides substantially for all expenses of the union. How much expense between these two extremes is reasonable and necessary for the welfare of the employees, and therefore, of the establishment is a matter for the exercise of the discretion of the Board of Directors.

Horace Russell, General Counsel.

Attach. cc—Briefs Section. hr;erm;j.

Opinion—Credit Union

December 23, 1936.

Legal Department, Home Owners' Loan Corporation

Horace Russell, General Counsel, Washington, D. C.

Question

The question has arisen as to whether the Federal Home Loan Bank Board and the Home Owners' Loan Corporation may incur expense for space and employees' time for the operation of a credit union, which is organized and operated for the general benefit and relief of employees.

A further question has arisen as to whether such expense may be incurred for space and employees' time for reasonable assistance in connection with the organization and operation of a medical service for the general benefit of employees.

Opinion

Both questions are answered in the affirmative.

Discussion

Section 19 of the Federal Home Loan Bank Act, as amended, provides in part as follows:

"The board shall have power to select, employ, and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary for the performance of its duties under this Act without regard to the provisions of other laws applicable to the employment or compensation of officers, employees, attorneys, and agents of the United States, * * * The board * * * shall determine its necessary expenditures under this Act and the manner in which they shall be incurred, allowed and paid. * * *"

This gives the Board broad authority to employ additional personnel and to incur necessary expenses in order to carry out the duties of the Board under the Act.

Section 4(j) of Home Owners' Loan Act of 1933, as amended, provides in part, as follows:

"The Corporation shall have power to select, employ, and fix the compensation of such officers, employees, at-

torneys, or agents as shall be necessary for the performance of its duties under this Act, without regard to the provisions of other laws applicable to the employment or compensation of officers, employees, attorneys, or agents of the United States. * * * The Corporation shall be entitled to the free use of the United States mails for its official business in the same manner as the executive departments of the Government, and shall determine its necessary expenditures under this Act and the manner in which they shall be incurred, allowed, and paid, without regard to the provisions of any other law governing the expenditure of public funds. * * *".

The general rule is that corporations have those powers which are expressly granted in addition to those impliedly granted as reasonably incident and necessary to the carrying out of the powers expressly granted.

In McCulloch v. Maryland (4 Wheat. 316), it is held that the word "necessary", is not to be given a narrow, restricted meaning.

In the case of Gilbert v. Norfolk & W. Ry. Co. (1933), 171 S. E. 814, Judge Kenna states in his opinion, as follows:

"Consistent with the general rule that a private business corporation is carried on primarily for the profit of the stockholders, and that therefore its charter powers and those of its board of directors must be exercised for that purpose, it has, nevertheless, been generally held that such corporations may, for the ultimate benefit of the corporation itself translated into profit, use the funds of such corporation for purposes which might appear directly to be charitable and humanitarian. It has been held that private corporations may take proper steps to insure adequate housing, school facilities, and churches; that they may supply medical attention for their employees, defray the expenses of taking care of injured employees, maintain benefit funds for sick and injured employees, and perform a variety of other acts which, upon their face, yield no direct return or benefit to the corporation and are in the nature of humanitarian grants to the employee. Without citing specific cases to maintain this general assertion, reference may be had for that purpose to the annotation following the case of Dodge v. Ford Motor Company, 3 A. L. R. 443 (case 204 Mich. 459, 170 N. W. 668, 3 A. L. R. 413). * * *"

In this annotation, 3 A. L. R. 443, at page 444, it is stated as follows:

"It is within the powers of a manufacturing corporation which has removed its plant to a sparsely settled locality, to purchase land in excess of its own needs, to make expenditures for streets and sewers, and a water supply therefor, to erect houses to be sold or rented to its employees, and to make contribution towards the establishment of a church, school, free library, and free baths, such a policy on its part reasonably tending to insure the continued and faithful service of a skilled and contented body of operators. Steinway v. Steinway & Sons, 1896, (17 Misc. 43, 40 N. Y. Supp. 718)."

Federal Credit Unions are organized under the Federal Credit Union Act (June 26, 1934, c. 750, sec. 1, 48 Stat. 1216), and in section 17 of said act are authorized to act as fiscal agents of the United States when requested so to do by the Secretary of the Treasury.

Credit unions are cooperative associations operating for the purpose of promoting thrift and of creating a source of credit for worthwhile purposes for its members. Through their operation saving is made easy and convenient. Credit unions are non-commercial in the sense that there are no promotional profits and that all investors share alike in proportion to the number of shares they own. The statute prescribes that membership is limited to persons having a common bond of occupation or association. Thus, the Washington Home Owners' Loan Corporation Federal Credit Union is exclusively for employees of the agencies under the Federal Home Loan Bank Board. A credit union now operates in each of the Regional Offices, the Richmond State Office and the San Antonio District Office. It is expected that each of the Home Owners' Loan Corporation's State Offices will soon have a credit union established. There are now upwards of 5,000 credit unions in the United States, of which 1,800 are under Federal charter and supervision as made possible by the Federal Credit Union Act.

It is assumed that in all cases where this question would arise the credit union is limited solely to the employees of the Federal Home Loan Bank Board agencies.

R. N. Elliott, Acting Comptroller General of the United States, on November 3, 1936, held that in the absence of specific statutory authority therefor, the Postmaster General may not lease or provide free of charge vacant space in Federal post office buildings to private parties, private enterprises or commercial concerns and that the two credit unions occupying space in the Post Office Building at Oakland, California, which were incorporated under the laws of the State of California, were private enterprises.

As the credit unions are under the Federal Credit Union Act organized for the purpose of promoting thrift and creating a source of credit for its members who in the case of the Washington Home Owners' Loan Corporation Federal Credit Union are employees of agencies under the Federal Home Loan Bank Board, it seems that the Federal Home Loan Bank Board has authority under the act to incur expense for space and employees' time for the operation of a credit union which is organized and operated for the general benefit and relief of employees of agencies under it, and it also has authority under the act to incur expense for space and employees' time for reasonable assistance in connection with the organization and operation of a medical service for the general benefit of employees. The Home Owners' Loan Corporation has both authority under the act and implied authority as reasonably incident and necessary to the carrying out of the powers expressly granted in the act to incur expense for space and employees' time for the operation of a credit union which is organized and operated for the general benefit and relief of its employees and also to incur expense for space and employees' time for reasonable assistance in connection with the organization and relief of its employees and also to incur expense for space and employees' time for reasonable assistance in connection with the organization and operation of a medical service for the general benefit of its employees.

(From Minute Exhibit File No. 519, Home Owners' Loan Corporation)

(Exhibit B)

March 1, 1937.

Memorandum:

To: Mr. Stevenson, Mr. Catlett, Dr. Hoagland, Mr. Russell.

From: R. R. Zimmerman, Group Health Association, Inc.

This is something of a prospectus of our proposed group health plan. Arrangements have been made for Mr. Rickcord of The Twentieth Century Fund, Inc., to discuss details of the plan with the Board at 10:30 o'clock, tomorrow morning. I am giving you this prospectus as you may have opportunity to sketch the material before the meeting.

R. R. Zimmerman

Att.

I hereby certify that the foregoing is a true copy of a memo. on file in H. O. L. C. Minute Exhibit File No. 519.

(Signed) R. L. Nagle, Secretary Home Owners' Loan Corporation. (Seal of the Home Owners' Loan Corporation.)

EXHIBIT C

Mr. Rickcord explained details of a proposed group medical service plan. Messrs. Russell and Zimmerman were directed to prepare and present a definite outline of procedure for consideration by the Board of Directors.

Washington, D. C.
December 2, 1937.

I hereby certify that the foregoing is a true and correct excerpt from the Minutes of a Meeting of the Board of Directors, Home Owners' Loan Corporation, March 2, 1937.

(Signed) H. R. Townsend, Assistant Secretary.
(Seal.)

EXHIBIT D

March 11, 1937.

Home Owners' Loan Corporation.

DEAR SIRS:

I attach a proposed resolution authorizing a contract between Home Owners' Loan Corporation and Group Health Association, Incorporated, copy of which proposed contract is attached.

In my opinion, Home Owners' Loan Corporation has legal power to adopt such resolution and enter into such contract, if in the opinion of the Board of Directors the service to be rendered under the contract and the benefits to flow from the arrangements are necessary for the most efficient operation of the Corporation for the accomplishment of its purposes, and if in the opinion of the Board of Directors the price paid is a reasonable price.

I supplied Members of the Board and certain executives with a memorandum on this subject and a copy of the brief of the law on December 28, 1936, which provide a more adequate discussion, if you desire it.

Very truly yours, Horace Russell, General Counsel.

Attach.

EXHIBIT E

"Whereas Group Health Association, Incorporated, has been organized and is about to establish a medical service amongst employees; and

"Whereas it offers a service to the Corporation which is deemed to be advisable and of value to the Corporation in the accomplishment of its purposes, equivalent at least to the expense involved, and such a service appears to be necessary for the most efficient accomplishment of the purposes of the Corporation: Therefore

Be it Resolved, That the proposed contract, a copy of which appears in Minute Exhibit File No. 519 is hereby approved and that the Chairman be authorized to execute the same on behalf of the Corporation."

Washington, D. C.
December 2, 1937.

I hereby certify that the foregoing is a true and correct copy of resolution adopted by the Board of Directors of Home Owners' Loan Corporation on March 17, 1937.

(Signed) H. R. Townsend, Assistant Secretary. (Seal.)

EXHIBIT F

Whereas, Home Owners' Loan Corporation desires to provide physical examination of applicants for employment, before employment, supervision of its present provisions for emergency treatment, and to cooperate in providing a substantially complete medical and hospital service to its employees and their families, all in the interest of the acquisition and maintenance of the highest possible type of personnel, which in the judgment of the Corporation is necessary for the accomplishment of the purposes of the Corporation, and

Whereas, Group Health Association, Incorporated, has been formed by certain employees of the Corporation to provide a substantially complete medical and hospital service, which is in positon to provide the service the Corporation requires, therefore, it is agreed as follows:

1. Group Health Association, Incorporated, agrees to provide a staff and service to provide a substantially complete medical and hospital service to employees of the Home Owners' Loan Corporation who are its members on substantially the basis outlined in the memorandum submitted to the Members of the Board by Mr. R. R. Zimmerman, dated March 1, 1937.

2. Group Health Association, Incorporated, further agree to provide at its headquarters at the request of the Home Owners' Loan Corporation physical examinations at the time of employment of all new employees in the Washington office.

3. Group Health Association, Incorporated, shall be required and agrees to manage and supervise the emergency rooms and the employees in the nursing service maintained in connection with such emergency treatment and in visitations to employees of the Washington office who are on sick leave.

4. Group Health Association, Incorporated, further agrees to provide bylaws satisfactory to the Corporation and to provide in its bylaws for two of its directors to be elected from nominations made by the Federal Home Loan Bank Board, who shall be members of an executive committee of five.

5. In consideration of the foregoing, and all of the benefits to flow to the Home Owners' Loan Corporation, as a result of the operation of Group Health Association, Incorporated, Home Owners' Loan Corporation agrees to pay $10,000 upon request, and beginning on the date of the establishment of its service the sum of $833.33 monthly in advance for a period of twelve months, and thereafter the sum of $1,666.67 per month for the succeeding twelve months.

6. It is further agreed that this contract shall remain in full force and effect for a period of two years from the date of the establishment of its service by the Group Health Association, Incorporated.

Authorized, entered into, executed and delivered by both parties as of the 22nd day of March, 1937.

Home Owners' Loan Corporation, by (S.) John H. Fahey, Chairman, Board of Directors.

Group Health Association, Inc., by (S.) W. F. Penniman, President Pro tempore.

I hereby certify the foregoing is a true and correct copy of the contract appearing in Minute Exhibit File No. 519 and approved by the Board of Directors, Home Owners' Loan Corporation at a meeting held on March 17, 1937.

(S.) H. R. Townsend, Assistant Secretary. (Seal.)

EXHIBIT G

The Board of Directors nominated Messrs. John W. Ballard and W. C. Kirkpatrick for election as trustees of Group Health Association, Incorporated, pursuant to Paragraph 4 of the agreement between said association and Home Owners' Loan Corporation.

Washington, D. C.
December 2, 1937.

I hereby certify that the foregoing is a true and correct excerpt from the Minutes of a Meeting of the Board of

Directors, Home Owners' Loan Corporation, March 22, 1937.

(S.) H. R. Townsend, Assistant Secretary. (Seal.)

EXHIBIT H

"Whereas Home Owners' Loan Corporation contracted with Group Health Association, Incorporated, for certain services to be rendered as is shown by the resolution of March 17, 1937, and the contract in Minute Exhibit File No. 519, and

Whereas said contract requires said association to provide bylaws satisfactory to the Corporation and to provide in its bylaws for two of its directors to be elected from nominations made by the Federal Home Loan Bank Board who shall be members of an Executive Committee of five, and

Whereas proposed bylaws have been submitted and considered: Therefore

Be it Resolved, That said bylaws submitted as shown in Minute Exhibit File No. 519 be approved subject to amendment as follows:

By striking the words 'and administrative' in the first line of section 4, of Article V, on Page 9; and

By adding to Section 1, of Article IX, the following:

"Provided that so long as the association is obligated to Home Owners' Loan Corporation to permit the Federal Home Loan Bank Board to designate two members of the Board of Trustees who shall be members of the Executive Committee, no amendment shall be adopted which would violate that obligation.' "

Washington, D. C.
December 2, 1937.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Board of Directors, Home Owners' Loan Corporation, June 4, 1937.

(Signed) H. R. Townsend, Assistant Secretary.
(Seal of the Home Owners' Loan Corporation.)

EXHIBIT I

"Whereas Group Health Association, Incorporated, has contracted with Home Owners' Loan Corporation to perform certain services for the Corporation and said Association is engaged in rendering certain services to employees of the Corporation, and

Whereas certain employees have assgined or are about to assign a part of their earnings to Group Health Association, Incorporated, in payment for such services to be rendered to them, and said association is about to begin business at an early date: Therefore

Be it Resolved, That upon receipt of a certificate from Group Health Association, Incorporated, certifying the date upon which its service will be available, the pay roll of Home Owners' Loan Corporation from and after such date shall be prepared to show deductions from the salaries due employees who have executed assignments to Group Health Association, Incorporated, which have been filed with the Treasurer of the Corporation, such deductions to be in the amounts specified in such assignments:

Be it Further Resolved, That the pay rolls of the Corporation be certified on and after such date as so prepared.

Be it Further Resolved, That on and after such date the Corporation pay to Group Health Association, Incorporated, the aggregate amount of such deductions promptly on or after such pay roll date."

Washington, D. C.
December 2, 1937.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Board of Directors, Home Owners' Loan Corporation, June 7, 1937.

(Signed) H. R. Townsend, Assistant Secretary.
(Seal of the Home Owners' Loan Corporation.)

EXHIBIT J

After discussion, the following resolution was adopted:

"WHEREAS on the 17th of March, 1937, Home Owners' Loan Corporation approved a contract with Group Health Association, Incorporated, by the provisions of which the

Corporation agreed for its benefit to support the work of the Association through the first two years of its operation to the extent of $20,000 each year, and

WHEREAS it is now apparent that in order to secure at a reasonable rental appropriate quarters for the contemplated service of the Association it is necessary to expend several thousand dollars for alterations and prepare for occupancy on a five-year lease, and

WHEREAS in addition to the foregoing it is necessary for the Association to purchase several thousand dollars worth of professional equipment in which by obtaining favorable prices and substantial discounts it is necessary to make cash investments the totals of which were not adequately anticipated; Therefore

BE IT RESOLVED, That Home Owners' Loan Corporation, in order to provide for and make possible the economies contemplated in making building repairs and cash purchases, pay upon demand to Group Health Association, Incorporated, in addition to a $10,000 payment heretofore authorized on demand, the sum of $15,000 to be deducted from the payments to be made during the second year of the operation of Group Health Association, Incorporated, the remaining balance for such second year to be paid at the rate of $416.66 per month, and

BE IT FURTHER RESOLVED, That Home Owners' Loan Corporation, in order to make use of its favorable buying power at government rates, purchase for cash at the maximum discounts supplies and equipment upon its regular voucher, approved by William F. Penniman, President of Group Health Association, Incorporated, at government contract rates, and deduct the amount paid for such equipment from the cash payment herein provided for, it being understood that the total purchases and cash payment will not exceed the total herein provided for."

Washington, D. C., December 2, 1937.

I hereby certify that the foregoing is a true and correct excerpt from the Minutes of a Meeting of the Board of Directors of Home Owners' Loan Corporation held on August 10, 1937.

(Signed) H. R. Townsend, Assistant Secretary.

(Seal of the Home Owners' Loan Corporation)

EXHIBIT K

"WHEREAS on March 17, 1937, Home Owners' Loan Corporation approved a contract with Group Health Association, Inc., providing for certain payments for health service, and

WHEREAS in equipping itself for the rendition of such service Group Health Association requires advance payment of some of the funds contracted to be paid and it appears to the interest of the Corporation to make such advance payment in order to facilitate the service to be rendered; Therefore

BE IT RESOLVED, That Home Owners' Loan Corporation, in addition to the payment under said contract heretofore authorized, does now authorize the payment of $5000 in cash upon demand in lieu of payments to be made under said contract for the second year of operation and the adjustment of the same made by resolution of August 10, 1937."

Washington, D. C., December 2, 1937.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Board of Directors, Home Owners' Loan Corporation, September 9, 1937.

(Signed) H. R. Townsend, Assistant Secretary.

(Seal of the Home Owners' Loan Corporation)

EXHIBIT L

Mr. R. R. Zimmerman, Director of Personnel, and Mr. Luke E. Keeley, Associate General Counsel, Home Owners' Loan Corporation, entered the meeting and discussed with the Board a plan for group medical service for employees of the Board and the agencies under its supervision. A committee was appointed consisting of Mr. Keeley, as Chairman, and Messrs. Loomis and Zimmerman to draft a letter on this subject for the signature of the Chairman of the Board to be sent to all employees.

Washington, D. C., December 2, 1937.

I hereby certify that the foregoing is a true and correct excerpt from the Minutes of a Meeting of the Federal Home Loan Bank Board, October 1, 1936.

(Signed) H. R. Townsend, Assistant Secretary.

(Seal of the Home Owners' Loan Corporation)

EXHIBIT M

November 16, 1937.

Federal Home Loan Bank Board,

DEAR SIRS:

I find that Group Health Association, Incorporated, has agreed to submit any amendment of its bylaws to the Federal Home Loan Bank Board for approval, and the attached amended bylaws are submitted for such approval.

The by-laws were amended by re-enactment in the attached form. Such amendment was necessitated to strengthen the legal position of the association. The original bylaws provided for payment of cash indemnities upon certain contingencies, such as hospitalization outside of the area of its operations, and such provision would have made it an insurance organization. These revised bylaws provide for it to secure doctors and provide hospital rooms and service for members to the extent of its available funds as limited in the bylaws, but do not provide for the payment of any cash indemnity at all. There is no change of substance but merely a change of the legal nature of the contract in this respect. The original bylaws permitted membership after separation from the Federal Service. This revision excludes membership except in the case of employees of the executive branch of the Government, excluding the Army and the Navy, and this provision is made to assure us the benefit of an exception from insurance regulations, if we are held to be an insurance company.

While there are changes at a number of places in the bylaws, all of these are intended to strengthen the legal position of the association, and none of them seem to the Board of Trustees to be of any substance. The Federal Home Loan Bank Board is requested officially to approve the revised bylaws.

Very truly yours,

Horace Russell, General Counsel.

Approved by Board November 19, 1937.
(Signed) H. R. Townsend, Assistant Secretary.

Exhibit N is By-Laws of Group Health Association, Inc., dated October 25, 1937.

Exhibit O

Assignment

For value this day received, the undersigned does hereby assign, set over, and direct

Home Owners' Loan Corporation
Federal Savings & Loan Insurance Corp'n.

to pay to Group Health Association, Incorporated, the sum of ——— dollars semi-monthly, out of any salary or wages due or to become due to the undersigned, from said Corporation so long as the undersigned is a member of Group Health Association, Incorporated.

Dated at Washington, D. C., this the —— day of———, 19——.

——— ———,
Signature

Witnesses:
——— ———,
——— ———,

Exhibit P

Group Health Association, Inc.

Washington, D. C.

Amended and Supplemental Application for Membership

(Print Name) I, ——— ———, hereby apply for membership in the Group Health Association, Incorporated. It is understood that upon delivery of Certificate of Membership Card to me bearing date of acceptance by the Board of Trustees of this application; I agree to abide by all Rules and Regulations and the By-Laws of the Corporation

Check Basis of Service and Method of Payment

Family basis	Individual basis	Deduct from check ——
$1.65 each pay day	$1.10 each pay day	Will pay personally ——

In the event I have indicated payments to be made by deduction from salary check, I hereby authorize and request my employer to deduct semi-monthly the amount indicated and remit the same to the Group Health Association, Incorporated.

Dated at Washington, D. C., this —— day of ———, 193—.

Applicant's Signature: ——— Date of Birth ———

Home Address ——— Home Telephone No. ———

Dept. ——— Room No. —— Br. No. —— Occupation ——

NOTE: The Board of Trustees of said Association reserves the right to reject any and all applications for membership.

Name and Address of family physician:

—— ——. —— ——.

Dependents to Receive Service

Name	Age	Relationship

Defendants offered that portion of H. R. No. 1662 of the House of Representatives appearing on page 16 thereof, marked Def. Ex. 20, reading as follows:

"Mr. Woodrum, for the Committee on Appropriations, submitted the following report:

" 'Group Health Association contribution, Home Owners' Loan Corporation—Entirely irrespective of the merits of the work proposed to be done under the Group Health Association, for which the Home Owners' Loan Corporation recently made a contribution of $40,000, the committee is of the unanimous opinion that the expenditure was not one authorized by any law and that such expenditures should not hereafter be made without specific legal authority."

Defendants offered in evidence the complaint in Equity Cause No. 66293 in the District Court, marked Def. Ex. 58 as follows:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA HOLDING AN EQUITY COURT

In Equity. No. 66392

GROUP HEALTH ASSOCIATION, a Corporation, Fed. Home Loan Bank Bldg., Plaintiff,

v.

J. BACH MOOR, Superintendent of Insurance for the District of Columbia, and David A. Pine, Acting United States District Attorney for the District of Columbia, Defendants

Petition for Declaratory Decree

Plaintiff, for its cause of action, states:

1. That it is a corporation duly organized and existing under the laws of said District of Columbia, with its place of business in the City of Washington, District of Columbia.

2. That defendant, J. Bach Moore, is Superintendent of Insurance for the District of Columbia, and defendant, David A. Pine, is Acting United States District Attorney for the District of Columbia, both with offices located in said District of Columbia.

3. That on February 24, 1937, plaintiff was duly incorporated as a non-profit mutual improvement society in the District of Columbia, pursuant to Section 121, Chapter 5, Title 5 of the Code of the said District. Copies of the Certificate of Incorporation with Amendments and the By-Laws of said corporation are hereto attached and made a part hereof and for identification marked Plaintiff's Exhibits "A" and "B", respectively.

4. That the membership in plaintiff corporation is composed solely of employees of the Federal Home Loan Bank Board, affiliated groups and of other civil employees of the executive branch of the United States Government in the City of Washington, District of Columbia. Such employment is a prerequisite to membership in plaintiff corporation and termination of such employment automatically terminates membership therein. Membership is wholly voluntary and may be terminated by any member, at any time, upon the giving of one month's notice to plaintiff.

5. That the purpose of plaintiff corporation is as stated in its Certificate of Incorporation, as follows:

"To provide, without profit to the corporation, for the service of physicians and other medical attention and any and all kinds of medical, surgical and hospital treatment to the members hereof and their dependents, and the construction and operation of a clinic and medical office building; and the construction and operation of a hospital in the manner permitted by law, for the members hereof and their dependents, and the operation of a drug store or pharmacy, and the providing of nurses and of drugs and remedies for the members hereof and their dependents, and the furnishing of all forms of hospital service and attention to the members hereof and their dependents, and in general the giving to the membership of this association and their dependents of all forms of care, treatment or attention that may be required by the sick or in the prevention of disease."

6. That plaintiff has, on behalf of its members, expended the sum of approximately twenty-five thousand ($25,000.00) dollars in setting up and equipping a modern clinic for the said members at 1328 Eye Street, Northwest, in the City of Washington, District of Columbia, and has, on behalf of its members, retained physicians, duly licensed in the District of Columbia, on salary to serve its members at that address, at hospitals, and at the homes of such members.

7. That oral contracts, on behalf of its members, have been entered into by plaintiff with the physicians aforesaid. A draft of the written contracts proposed to be entered into has been forwarded to the Medical Society of the District of Columbia for approval, and a specimen copy of such contracts is attached hereto, made a part hereof, and marked Exhibit "C" for identification.

8. That plaintiff, on behalf of its members, has arranged hospitalization for its members in various hospitals operating in the District of Columbia so that its members may receive adequate service at all times, for which the corporation pays.

9. That plaintiff, through said practitioners and institutions with whom it has made arrangements, as aforesaid, has, since November 1, 1937, made available the following services to its members, in accordance with Article 10, Section 1 of its by-laws, to-wit:

"Medical and surgical examinations and treatments, including examinations in special departments, such as refractions of eyes, laboratory tests, x-ray examinations, surgical operations, confinement cases and professional consultations, nursing and ambulance facilities, house calls, and hospitalization in a semi-private room (two-bed room) or a private room, limited in either case to a period not to exceed 21 days for any one illness; provided, however, that each member desiring to occupy a private room shall reimburse the corporation for so much of the cost of such room as shall exceed the sum of $4.00 per day; provided, further, that such member shall make such payments to assure such reimbursement as the corporation shall require, and provided, that the benefits provided outside of the territory of the association shall be limited to the provision of a hospital room for the time and as is herein provided.

"The extent that medical service relating to the foregoing items will be furnished to members shall be determined and prescribed by the Medical Director or his representatives in each individual case."

10. That members of the plaintiff corporation pay for the said services arranged for by said plaintiff, as aforesaid, a fixed sum per month, there being two types of membership, namely, individual membership at two dollars and twenty cents ($2.20) per month, and a membership of three dollars and thirty cents ($3.30) per month which entitles a member to said services for himself and his listed dependents as outlined in plaintiff's by-laws.

11. That the business of plaintiff is managed by a Board of Trustees composed of eleven members thereof elected by the members of the plaintiff corporation in accordance with its by-laws, but the physicians employed by it on a salary basis and compensated out of the dues paid into the corporation by its members, are, under the direction of a Medical Director, a physician duly licensed in the District of Columbia and elsewhere, completely in charge of all medical attention given or necessary to be given to the individual members of plaintiff corporation and their dependents; that plaintiff is a non-profit corporation, organized and controlled by its members, who, in order to procure for themselves and their dependents adequate medical care, are simply cooperating, in corporate form, to that end.

12. That on or about January 15, 1938, notice was given by the defendant, David A. Pine, Acting United States District Attorney for the District of Columbia, to the plaintiff that, unless operations were immediately suspended and the affairs of the plaintiff were wound up, a bill for injunction or legal proceedings looking to the involuntary dissolution of the plaintiff corporation would be brought against the plaintiff on the ground that it, said plaintiff, is illegally engaged in the practice of medicine, as the same is defined by the Healing Arts Practice Act in the District of Columbia, and is illegally engaged in the insurance business within the meaning of Title 5, Chapter 7, Section 179 of the Code of Laws of the District of Columbia.

13. That on or about January 15, 1938, notice was given by the defendant, J. Bach Moor, Superintendent of Insurance for the District of Columbia, to the plaintiff that it, said plaintiff, is improperly incorporated under the laws of the District; that it is illegally engaged in the insurance business within the meaning of Section 179, Chapter 7, Title 5 of the Code of the District of Columbia; that it must reincorporate as an insurance company and comply with all provisions of the laws of the District of Columbia as to reserves, etc., applicable to such insurance companies, and that, unless these demands are immediately satisfied by said plaintiff, injunctive or other available legal proceedings will be brought to end the operations of said plaintiff.

14. That said plaintiff denies such charge in every particular and specifically denies that it in any sense practices medicine, illegally or otherwise, under said Healing Arts Practice Act of the District of Columbia, and in no manner commercializes the practice of medicine in contravention of law or public policy; it further specifically denies that it is engaged in the insurance business in the District of Columbia and further denies that it must in any way comply with insurance laws of the District of Columbia, and states that it makes no payments of indemnity and insures against no hazard or peril. Plaintiff alleges that in threatening the actions aforesaid the defendants are acting beyond the scope of their legal authority, and plaintiff refuses to comply with the demands of said defendants, or either of them, that is, the plaintiff, suspend its operations or comply with further demands of said defendants, or either of them.

15. That, if defendants take the action threatened, plaintiff will be irreparably injured; its business, its peace, and its freedom in the operation thereof, will be interfered with; that such action, if taken, threatens a valuable property right and franchise, raises doubt, insecurity in plaintiff's operation of its business, impairs and jeopardizes its business, property rights and franchise, and threatens the investment in equipment heretofore made by plaintiff, as hereinabove more fully described.

16. That, by reason of each and all the facts aforesaid, plaintiff's only remedy, in order to avoid suffering irreparable damage by reason of the action that is impending on the part of the said defendants, is to bring suit in Equity, praying a declaratory judgment or decree upon the part of this Court relative to the actual controversies hereinabove set out, and a declaration of the rights and other legal relations of the parties hereto with reference to the validity of Group Health Association, Incorporated.

Wherefore, plaintiff prays that this Court render a declaratory decree or judgment, defining the status of Group Health Association, Incorporated, and declaring the same to be in no sense illegally or otherwise engaged in the practice of medicine or engaged in an insurance business, that this Court render a declaratory judgment that, under the correct construction of the insurance statutes of the District of Columbia and the Healing Arts Practice Act of the District of Columbia, the plaintiff is entitled to continue its operations; that defendants, or either of them, are without authority to prohibit or interfere with the legal operations of plaintiff; and that the Court grant to plaintiff such other and further relief as justice may require, or to the Court may seem meet and proper in the premises.

Group Health Association, a Corporation, by W. C. Kirkpatrick, President.

Horace Russell, Luke E. Keeley, A. Blaine York, B. K. Newmann, Attorneys for Petitioner—all of Federal Home Loan Bank Board Building, Washington, D. C.

DISTRICT OF COLUMBIA ss:

W. C. Kirkpatrick, being duly sworn on oath, says he is President of Group Health Association, Incorporated, peti-

tioner herein, and makes this affidavit in its behalf; that he has read the foregoing petition subscribed by him in behalf of said petitioner and knows the contents thereof and that the matters and things therein stated as of his own knowledge are true and those stated upon information and belief he believes to be true.

W. C. Kirkpatrick.

Subscribed and sworn to before me this January 27, 1938. Dorothy I. King, Notary Public, D. C. My commission expires June 1, 1942.

Defendants offered in evidence the file in Civil Action No. 2474 in the District Court, marked Def. Ex. 59 as follows:

DISTRICT COURT OF THE UNITED STATES FOR DISTRICT OF COLUMBIA

Civil Action No. 2474

IRENE KRAMER, 3505 14th Street N. W., Washington, D. C. Plaintiff,

v.

GROUP HEALTH ASSOCIATION, INC., a Body Corporate, 1427 Eye Street, Northwest, Washington, D. C.

and

RICHARD H. PRICE, 1328 Eye Street, Northwest, Washington, D. C., Defendants

Complaint

(for damages for malpractice and negligence)

1. The Plaintiff, Irene Kramer, a resident and citizen of the District of Columbia, sues the defendants, Group Health Association, Inc., a body corporate doing business in the District of Columbia, and Richard H. Price, a doctor of medicine practicing in the District of Columbia, for damages for personal injuries she sustained as a result of defendants' negligence in their prescription and administration of certain medical treatments hereinafter more particularly described. The plaintiff was, on the dates of the

grievances herein complained of, a member of defendant incorporated association and has performed all the necessary conditions before bringing this suit and has exhausted to no avail all her legal remedies within the said corporation as provided by the by-laws thereof.

2. The Group Health Association, Inc., and Richard H. Price are sued herein as co-defendants and plaintiff says that all acts complained of herein which were committed by any of their agents and/or employees upon the premises were committed with the knowledge, consent, approval and direction of both defendants, and that the defendant Price was at the times and places of all the grievances herein complained of in the employment of the technical, diagnostic, and all other medical services to members of said corporate defendant in need thereof, including the said plaintiff, for which the defendant Price was paid a salary by the corporate defendant.

3. In the early part of October, 1938, plaintiff visited the clinic of the corporate defendant and consulted with defendant Price about a certain skin irritation on the back of her neck. The defendant Price recommended and arranged for ultra-violet ray lamp treatments and thereafter, until the week of December 26, 1938, plaintiff received, at said clinic, these ultra-violet ray treatments at the rate of twice each week.

4. During the week of to-wit December 26th, 1938, defendant Price recommended and arranged for a "cold quartz" ray treatment for plaintiff and which treatment was given plaintiff at said clinic. On to-wit December 30th, 1938, plaintiff, at the instructions of defendant Price, was given another such treatment.

5. There was then and there, from the date of first treatment, to the date of last treatment, to-wit, December 30, 1938, a duty upon the said defendants, their employees and/or agents, to exercise great care, prudence, skill and science in the treatment of all members of the corporate defendant including said plaintiff, but nevertheless, in violation and breach of said duty, the defendant Price and the employees and/or agents of said defendants negligently and carelessly prescribed and administered the above-mentioned treatments and plaintiff says that defendants were negligent not only in the prescription of the method of treatment but

also in the administration of such treatment, in that, to-wit, the use of the cold-quartz lamp used twice during the week of December 26, 1938, was negligent, careless and incorrect both in the period of time during which plaintiff was exposed to the rays thereof and also in the distance said lamp was placed by defendants from the plaintiff, and also in the mere use of such lamp for such ailment.

6. That as a result of defendants' negligent and careless acts as aforesaid, plaintiff, on to-wit December 30, 1938, suffered a severe burn of the skin of her face, neck, shoulders and both arms, and was rendered severely ill in great pain and agony and was compelled to remain confined in bed and at home for a long period of time, to-wit, from December 31, 1938, to February 2, 1939, during which time she lost much sleep because of the intense pain as aforesaid and was unable to attend to her ordinary and usual affairs and during that time she was compelled to remain home from work at her position in the Home Owners Loan Corporation where she was employed as a stenographer at the salary of $32.50 per week.

7. Because of the injuries received as aforesaid, plaintiff became obligated to spend certain sums of money for medical attention and services rendered and will be compelled to continue such expenditures in attempting to cure the aforesaid injuries, all of which is estimated as follows:

Medical expenses to date	$70.00
" " future estim.	70.00
Loss of earnings	130.00
Pain & suffering, etc.	4,730.00
Total	$5,000.00

8. Plaintiff anticipates that defendants will defend this action in part on the ground that plaintiff was allergic to the above-described treatments, and plaintiff says that defendants have never made any proper dermatological or other proper tests to ascertain such condition and plaintiff further says she was not on the dates of said treatments allergic thereto.

Therefore, plaintiff claims judgment against Richard H. Price or against Group Health Association, Inc., or

against both defendants in the sum of $5,000.00, besides costs.

(Signed) Morris D. Schwartz, Attorney for Plaintiff,
635 F Street N. W. Rep. 3380.

Jury Demand: Plaintiff demands jury trial of all issues herein involved.

(Signed) Morris D. Schwartz, Attorney for Plaintiff.

Defendants offered in evidence the file in Civil Action No. 6436 in the District Court, marked Def. Ex. 60 as follows:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

No. 6436

BEATRICE KENNEDY, Executrix Under the Last Will and Testament of Monte R. Kennedy, Deceased, 6701 44th Street, Chevy Chase, Maryland, Plaintiff,

v.

GROUP HEALTH ASSOCIATION, INC., a Corporation, 1427 Eye Street, N. W., Washington, D. C.

LOUIS B. BACHRACH, Farragut Medical Building, Washington, D. C.

CHARLES J. ALBRIGHT, % Group Health Association, Inc., 1427 Eye Street, N. W., Washington, D. C.

GERALD LONG, % Group Health Association, Inc., 1427 Eye Street, N. W., Washington, D. C., Defendants

Complaint for $10,000.00 Damages by Reason of Death by Wrongful Act

1. This is a suit for damages in the amount of $10,000.00 on a claim of death by wrongful act.

2. That prior to the 6th day of August, 1939, plaintiff's intestate became and was a member of Group Health Association, Inc., a corporation duly organized under the laws of the District of Columbia. That by virtue of his member-

ship in said Association, plaintiff's intestate was entitled to receive, and said defendant, Grou Health Association, Inc., agreed to provide, certain medical and surgical care and attention, including hospital, medical and nursing services incident thereto should plaintiff's intestate be in need thereof.

3. That on, to wit, the 6th day of August, 1939, plaintiff's intestate became ill and in accordance with the agreement aforesaid, applied to the said defendant, Group Health Association, Inc., for medical care and attention in accordance with the agreement aforesaid; that at that time plaintiff's intestate was suffering from an illness or ailment which required immediate medical care and attention. That defendant, Group Health Association, Inc., undertook to furnish said medical care and attention in accordance with its agreement aforesaid, and in doing so, negligently and carelessly provided such medical care and attention; that it furnished incompetent medical care and attention; that it supplied or furnished the services of the defendant, Charles J. Albright and the defendant, Gerald Long, both regularly employed by said defendant, Group Health Association, Inc., as physicians or surgeons; that the defendant Dr. Albright and Dr. Long, as agents, servants and employees of the defendant, Group Health Association, Inc., negligently and carelessly diagnosed intestate's ailment or illness, and negligently and carelessly failed to enter said intestate in a hospital as was necessary in order to provide for proper and immediate surgical care and attention and negligently and carelessly prescribed for or otherwise professionally treated said intestate; that on, to wit, August 7, 1939, when the said defendant, Group Health Association, Inc., did enter said intestate in a hospital it supplied and provided the services of the defendant, Louis B. Bachrach and that said defendant, Bachrach negligently and carelessly diagnosed intestate's ailment or illness and negligently and carelessly failed to operate on plaintiff's intestate at a proper time and negligently and carelessly treated plaintiff's intestate during said illness or ailment.

4. As a result thereof plaintiff's intestate languished and died.

5. Plaintiff's intestate left surviving him his widow, Beatrice Kennedy, and the following children: Evelyn Lee

Jane Kennedy, Richard Clark Kennedy and Monte Ray Kennedy, Jr., who are his next of kin and who are entitled to have maintained on their behalf this action for death by wrongful act in accordance with the statute made and provided.

Wherefore, the plaintiff demands judgment against Group Health Association, Inc., Louis B. Bachrach, Charles J. Albright, and Gerald Long, or against each of them, in the sum of $10,000.00 and costs.

Henry I. Quinn, Austin F. Canfield, Attorneys for Plaintiff, 637 Woodward Bldg., Washington, D. C.

Comes now the plaintiff in the above-entitled cause, by her attorneys, and makes demand that the issues herein made be tried by a jury in accordance with Rule 38 of the F. R. C. P.

Henry I. Quinn, Austin F. Canfield, Attorneys for Plaintiff.

• • • • • • •

Answer of Defendant, Louis B. Bachrach

Defense Number 1

1. For answer to the complaint filed herein, the defendant, Louis B. Bachrach, says that the plaintiff fails to state grounds upon which relief can be granted.

Defense Number 2

1. For further answer to complaint filed herein against him, the defendant, Louis B. Bachrach, says that he has no knowledge of any contractual relation existing between plaintiff's deceased husband and Group Health Association, Inc.

2. He denies that the defendant, Group Health Association, Inc., supplied and provided the services of this defendant to the plaintiff's deceased husband, but says that Dr. Gerald Long called him to render surgical services, if needed, to the said plaintiff's deceased husband.

3. This defendant denies that he was negligent as alleged in said complaint.

4. This defendant denies paragraph 4 of the plaintiff's complaint.

5. This defendant has no knowledge of the allegations contained in paragraph 5 of said complaint and can therefore neither admit nor deny the same.

Harry H. Bettelman, Attorney for Defendant, Louis B. Bachrach, 1104 National Press Bldg., District 0484.

Service of a copy of the foregoing answer of Defendant, Louis B. Bachrach, made upon Henry I. Quinn and Austin F. Canfield, attorneys, for plaintiff, by mailing same to them at their last known address, 637 Woodward Building, Washington, D. C., through the U. S. Mail, postage prepaid, this 22nd day of April, 1940.

Harry H. Bettelman, Attorney for Defendant, Louis B. Bachrach.

* * * * * * *

Answer of Defendants Charles J. Albright and Gerald Long

Defense No. 1

The complaint fails to state grounds upon which relief can be granted against these defendants.

Defense No. 2

1. These defendants state that they are without sufficient knowledge or information to enable them either to admit or deny the allegations of paragraph 2 of the complaint.

2. They admit that plaintiff's decedent became ill on August 6, 1939 and state promptly upon having the fact brought to their attention they rendered him necessary medical care and attention. They deny that they negligently and carelessly provided such medical care and attention, or that such care and attention was incompetent, and state that they were then physicians duly licensed to practice their profession in the District of Columbia. They deny that they or either of them were agents or servants of Group Health Association, Inc., and state they were independent contractors under the terms of their respective contracts with said association. They deny that they or either of them negligently and carelessly diagnosed the illness of plaintiff's decedent, or negligently and carelessly failed to enter plaintiff's decedent in a hospital in order to provide for proper and immediate surgical care and atten-

tion, or negligently and carelessly prescribed for or otherwise treated said decedent. They deny that the services of the defendant, Louis B. Bachrach were supplied and provided by Group Health Association, Inc., and state that said Gerald Long in his professional capacity and as such independent contractor engaged the services of said Bachrach. They deny that the defendant, Louis B. Bachrach was negligent as alleged in paragraph 3 of the complaint.

3. They deny the allegations of paragraph 4.

4. They are without sufficient knowledge or information to enable them to either admit or deny the allegations of paragraph 5 of the complaint.

James Sherier, 910 17th St., N. W., Washington, D. C., and E. K. Neuman, 1422 K St., N. W., Washington, D. C., Attorneys for Defendants.

Service of copy of the foregoing Answer made upon Henry I. Quinn and Austin F. Canfield, attorneys for plaintiff, by mailing same to them at their address, 637 Woodward Building, Washington, D. C., this 29th day of May, 1940.

James Sherier.

* * * * * * *

Answer of Group Health Association, Incorporated

Defense Number 1

The complaint fails to state a claim against this defendant upon which relief can be granted.

Defense Number 2

1. This defendant admits that prior to August 6, 1939, plaintiff's decedent became and was a member of Group Health Association, Inc.; but it denies that by virtue of said membership it agreed unqualifiedly to provide him medical, surgical and other service; as alleged in the complaint. On the contrary it states that the undertaking of this defendant with plaintiff's decedent, as constituted by the by-laws of said Association, was that in consideration of certain dues paid by him to it (1) it would enter into contracts for and on his behalf with physicians duly licensed to practice their profession in the District of Columbia to

render such medical and surgical care and attention as might be needed by him and as described in and limited by said by-laws; (2) that it would not regulate or supervise the practice of medicine by any physician with whom it contracted on his behalf, or supervise, regulate or interfere with the usual professional relationship existing between him and such physician; (3) that it did not guarantee that it would provide any or all of the services for which it would attempt to contract on his behalf; (4) that it would not be liable to him in any manner whatever if it should be unable for any reason to procure any or all of said services when called upon to do so; (5) that it did not guarantee that any physician with whom it might enter into a contract to render such service on his behalf would perform such contract or perform it properly; (6) that its only obligation in the event of the breach of such contract by any physician was, on his request, to use its best efforts to procure the needed services from another source; (7) and that it would not be liable to him for any act of omission or commission on the part of any physician with whom it might contract for the rendering of services to him.

2. This defendant admits that plaintiff's decedent became ill on August 6th, 1939, and states that promptly upon his request it provided him with necessary medical care and attention according to its undertaking. It denies that it negligently and carelessly provided such medical care and attention; or furnished incompetent medical care and attention. On the contrary it states that it furnished the services of the defendants, Charles J. Albright and Gerald Long, both of whom were then physicians duly licensed to practice their profession in the District of Columbia. It denies either of the said physicians was the agent or servant of this defendant, but alleges that both of them in their relationship to this defendant and plaintiff's decedent were independent contractors under the terms of their respective contracts with this defendant; that it denies that either of said physicians negligently and carelessly diagnosed the illness of plaintiff's decedent, or negligently and carelessly failed to enter plaintiff's decedent in a hospital in order to provide proper and immediate surgical care and attention, or that either of them negligently and carelessly prescribed for or otherwise professionally treated plaintiff's decedent; and that it denies that it provided the services

of the defendant, Louis B. Bachrach, but states that said Gerald Long in his professional capacity and as such independent contractor engaged said Bachrach and this defendant denies that said Bachrach was negligent as alleged in the complaint.

3. It denies the allegations of paragraph 4 of the complaint.

4. It is without sufficient knowledge or information to enable it either to admit or deny the allegations of paragraph 5 of the complaint.

James Sherier, 910 17th St., N. W., Washington, D. C., and E. K. Neuman, 1422 K St., N. W., Washington, D. C., Attorneys for Defendant.

Service of copy of the foregoing Answer made upon Henry I. Quinn and Austin F. Canfield, attorneys for plaintiff by mailing same to them at their address, 637, Woodward Building, Washington, D. C. this 29th day of May, 1940.

James Sherier, Attorney for Defendant.

Mr. Richardson: Has your Honor as yet announced any ruling on the question held in abeyance, as to whether evidence would be admitted to show that subsidies were granted to GHA with the knowledge of the defendants?

The Court: My statement is that I have reached my conclusion and do not consider the evidence admissible; therefore, I sustain the Government's objection to that line of evidence. I might briefly indicate my reasons, which are two-fold.

First, I do not regard the financial and economic affairs of GHA as material to the issues of the case; secondly, as to its bearing upon the question of the Medical Society's approving GHA, there is nothing to show that at the time of any action by the Medical Society, or any of its committee or representatives, they knew of any subsidy or financial assistance being given by these organizations. Hence, it could not in any wise enter into their considerations.

So far as the evidence now shows, there is nothing to indicate that the defendants knew anything of these alleged subsidies up until the time that the evidence was produced here.

Mr. Richardson: I feel I should say part of our offer is to prove knowledge.

The Court: Where would it go back to?

Mr. Richardson: In the first place, the evidence in the record as it stands now is replete with statements from the very start that this thing was financed by the Twentieth Century Fund.

The Court: The evidence shows that there was no financial assistance given to them until August, 1938.

Mr. Lewin: That is right.

The Court: How do you reconcile that? You don't claim that they gave them any financial assistance, do you—any of those organizations?

Mr. Richardson: Oh, yes, because we have the evidence of Mr. Rickcord, who was the man who actually set it up. They paid his full salary from December 1, 1936. He was instrumental in setting it up. They paid his office rent, paid his clerks. They paid his rent for the administrative offices of GHA.

The Court: I may not have a correct understanding of that. I do recall that there was testimony of one of the doctors in the early stages of the matter that indicated that Mr. Rickcord had something to do with it.

Mr. Lewin: I think it is in evidence that he talked to Mr. Rickcord generally about the plan.

The Court: I will put my decision upon a broad basis, and that is the first ground.

The second ground is put as secondary, and I thought I was correct in my understanding of it.

I do recall that there is something in the evidence—I think it came out in the Government's evidence, perhaps, showing losses—indicating what may be termed a suspicion that the Filene Fund was back of it; but when you take your offer of evidence now, which indicates that no actual financial assistance was given, no actual support to the organization itself after it got started was given until August, 1938, I do not see how that could bear upon anything that was done by the defendants previous to that time.

Mr. Burke: In the annual report of the Twentieth Century Fund, which Mr. Brown identified, it is set forth that from December 1, 1936, they contributed financially and were instrumental——

The Court: I do not think it is material. I think the first ground is inclusive.

Then, of course, I have always had this in mind, with reference to this so-called matter of approval by the Medical

Society. I think the Medical Society had a right to approve or disapprove as it pleased, if it saw fit.

Mr. Richardson: I wonder whether that might not have to be urged here.

The Court: They had the same right to approve or disapprove as I would have or anyone else would have. Now, if their action went no further than disapproval, that was not conspiracy; if it went further—if disapproval was supported by affirmative action in the nature of a conspiracy to do things to restrain, then you would have a conspiracy. But mere disapproval is merely the exercise of one's right to think and to say what he thinks, and that does not involve conspiracy. It may be a motive for conspiracy, don't you see, but of itself it is not conspiracy.

Mr. Richardson: The reason for it would not be an issue in your mind?

The Court: It is only evidence as showing motive, as showing background. It is just the same as though one of us went out and shot somebody. Evidence of dislike or personal animosity toward that person is evidence of motive.

Mr. Richardson: The only thing we are exercised about is that we fear we are going to be severely catechized as to the reasons why we disapproved, and we feel that we are shut out, on our side, from showing the reasons why we did disapprove.

The Court: I think you have that proof in, and also the documentary evidence.

I may say, so that there will be no misunderstanding about it, that I do not think, in view of my keeping out this evidence, which I consider immaterial upon the ground that I think the financial structure of GHA is irrelevant, that anything should be argued by the Government that they were a financially stable, sound concern. If you are going to make an argument of that sort on the one hand, then, of course it is going to open up the question.

Mr. Kelleher: I am sure we have no intention of doing that.

The Court: I do not see any ground now on which you would be justified in making any such observations, for the simple reason, as I say, that I consider it immaterial. But if you are, it might create an embarrassing situation, and I might have to reveal the fact, or the defendants might, that this evidence here indicating need of financial help was offered and was rejected by me.

I have known in this Court of breaks of that sort to be made in argument, and the Courts have re-opened the case to let in the evidence.

Mr. Richardson: We have some doubt as to whether the offer of proof should not be re-drawn and be amplified, unless the Government is willing that the record should show by stipulation that no point is made as to the form of the offer and that the Government does not make any point that we have not called the witnesses or produced the documents and, under oath, attempted to elicit the testimony.

The Court: I understood we had all agreed upon that, that we were not going through the useless formality of producing witnesses. When you made your written offer to prove these things, we all accepted the assurance that the witnesses would be available and that testimony could be offered tending to prove it. In making my ruling I assumed that such proof was available.

Mr. Lewin: We are in agreement with that statement, when you couple your offer with your oral statements in answer to the Court's inquiries.

The Court: I made a little note of that. I thought that was necessary. I noticed the same thing that you were speaking of when I was writing my memorandum. You will recall that at the bottom of it, in order to protect myself, there is this paragraph (reading):

"The offer of proof, as I have treated it, is the written paper filed March 14, 1941, as orally amended, revised and explained by counsel for the defendants. Many of the documentary items contained in the written offer are already in evidence. They can be dealt with later in keeping with this decision."

Certainly I will protect you in any way that is necessary.

Mr. Richardson: I did not want to be met with the idea that there had been some technical failure to complete the offer.

There is one further thing that ought to be fixed up. A number of these papers that were turned over to the court were already in evidence, such as the regulations and by-laws. The contract with H. O. L. C. and such contract as there was between Group Health Association and its members have never in fact been offered in evidence. It might

be well to have a stipulation that they can be put in the record and then be objected to——

The Court: They should all be in.

Mr. Richardson: And then be ruled out?

The Court: They are ruled out under this. I have assumed you had them available. Of course, for purposes of the record, if the case should go up on appeal, they should be identified in the record, so that you would have them in if you should ever need to appeal, you see.

Mr. Richardson: Would there be any difficulty in taking the H. O. L. C. decision and these other various documents and having you identify them, satisfying yourself that they are the papers, and then have us offer them and have them ruled out under this?

The Court: They are offered in your offer of proof, but they are not identified in the record.

Mr. Richardson: Oh, yes. You mean, given an exhibit number.

Mr. Lewin: Just give them a number and state that they are the ones.

The Court: So that finally, if you should ever have to go up, in making up your record you will have those papers. It would be a matter of identification, now, because I have treated them in the offer when I considered them. You two can get together on that and just identify them and have the stenographer mark them in any way you say they should be marked, defendants' exhibit so and so far identification. If you want to, you can put on it "Part of the proof in defendants' offer of proof of March 12," or whatever date it was.

Mr. Richardson: I suppose the offer of proof itself ought to be in.

Mr. Kelleher: I think it is in.

Mr. Richardson: It is not in the transcript. It ought to be in the transcript.

The Court: You may have it copied in, if you wish.

Mr. Laskey: Is it not a mere matter of identifying the particular pamphlets and papers that you ruled on?

The Court: Exactly so. If you want to you can add to the identification that it is one of the documents contained in the offer of proof, as a further identification. That offer of proof is actually filed.

Mr. Burke: Would it be all right to put it into the transcript?

The Court: Surely. Anything you want to pay for can go into the transcript.

Mr. Lewin: In reference to the things already in evidence that touch on that point, I understand that your Honor's ruling that that subject was immaterial would go to such matters as are already in the record that would support it, and that it could not be argued to the jury?

The Court: Yes. Of course those things that were admitted may bear upon other questions.

Mr. Lewin: Yes. I think there were letters that had things in them that were admissible, and then another paragraph about something else.

The Court: That is what I mean when I say they may be dealt with in the future as circumstances may require.

Mr. Lewin: This is the point I want to make. I was concerned with your Honor's observation about argument. We cannot expect defense counsel to urge illegality as justification by referring to what was in the record to support it.

The Court: No, because if they did I would simply have to rule them out of order.

Mr. Burke: In considering that offer of proof you said that this went in and that went in, and others were under consideration. I take it you meant by that that the things you indicated you wanted in evidence, for instance, the contract——.

The Court: This (indicating) is the defendants' offer of proof. I referred to it as such in my memorandum which was filed March 14. When I looked at this overnight I saw that some of these things were in, but I wanted to be sure that all were before me which were necessary for me to consider, so that whatever ruling I made would be supported by the offer, you see. In arriving at my conclusions they are before me, and they are not before the jury. I assume them to be true for the purposes of my ruling. So I went over this and we agreed that this and that were in, and this was to be in. In other words, it was not in but it was to be in. One of them I have marked with a question mark.

Mr. Richardson: I think we understand it perfectly now.

Mr. Burke: I asked your Honor whether you intended that the contract of H.O.L.C. should be read in evidence or not.

The Court: No; I am excluding it. It is not to be read in evidence.

Mr. Richardson: It is to be offered as an exhibit and numbered, and then ruled out.

The Court: It is to be marked Defendants' No. so and so for identification.

Mr. Richardson: So that we will know what instrument ties up with the offer of proof.

The Court: And then this general ruling of mine will exclude it. If it is already in it will stay in to be dealt with appropriately later. If it is in, it is on some other ground. I think we understand each other. If you have not got an understanding about it I will clarify it.[8]

The objections of the United States to all of the foregoing offers and re-offers of proof of the defendants (pages 1363-1435 supra) were sustained, and all of the foregoing offers and re-offers of proof were rejected by the Court with an exception to the defendants.

REBUTTAL TESTIMONY ON BEHALF OF THE UNITED STATES

MRS. CHARLES HARDIN, a Witness for the Government.

Direct examination.

By Mr. Kelleher:

On June 19, 1938, my husband became sick with appendicitis, and Dr. Solet was called by me. Mr. Hardin was taken to the hospital and operated on. When Dr. Solet came into the house I had a conversation with him concerning Group Health, and he said Group Health doctors were not permitted to operate in the hospitals and therefore suggested calling another surgeon, to prevent a waste of time. I said we were members of Group Health, and we wanted to know about who should operate. Dr. Solet suggested Dr. Bachrach. When Dr. Bachrach came, Dr. Solet said, "These people are members of Group Health, but I have told them Group Health doctors are not permitted to operate."

And Dr. Bachrach said, "That is right."

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[8] (The Court's written opinion covering similar offers and referred to by the Court, herein appears, pages 945-948, supra.)

I conducted negotiations with Dr. Solet about Dr. Bachrach coming in and seeing the patient. My husband did not participate in them at all, other than he said whatever I said was all right, and whatever occurred that evening there with Dr. Solet and Dr. Bachrach was done in my presence.

Cross-examination.

By Mr. Leahy:

I remember that Dr. Solet mentioned some other names of several doctors, but I only recall Cafritz at this time. Others were mentioned, two others.

DR. MARIO SCANDIFFIO, a Witness for the Government.

Direct examination.

By Mr. Kelleher:

My present position is that of medical director of Group Health. I am a doctor of medicine. I received my medical degree from George Washington University in 1928 and spent three years of internship and residency at the New York Post Graduate School and Hospital, and since then I have been in private practice in pediatrics. I joined Group Health on November 1, 1937, as a pediatrician. Dr. Henry Brown was medical director when I came.

It was customary during 1938 for the Group Health clinic to keep records of the number of patients seen by doctors on the staff. Each doctor listed his patients "seen" in a book. From this book daily and monthly summaries were made by the clerical staff. Those records are under my control now as medical director. I have the monthly summaries showing treatments by Dr. Richard Price. I have all the daily summaries, except the month of September, 1938, which is missing. All records, both daily and monthly, of that month are completely missing. I have a daily record showing the treatments of Dr. Price for the rest of the year 1938—that is, with the exception of about 13 days throughout the year, for which I could not find any records.

The largest number of patients seen by Dr. Price in one day as shown by these records, was 51. The next highest

number grades down to 34. There are exactly 17 days out of the entire year 1938 when Dr. Price saw more than 34 patients a day: that is, had 34 names of patients listed in his record; and outside of the 18 days during that period Dr. Price saw less than 34 patients a day. The average number of patients listed in Dr. Price's record for the entire year of 1938 was 18. The list of patients seen usually included, and did include with the exception of Dr. Price, those patients seen in the office, home, or hospital each day. I mean by the exception that Dr. Price listed in his record telephonic conversations, the names of patients who accosted him in the hall, and the names of patients who received services from him such as injections, interpretation of X-ray plates, fluoroscopic examinations, and X-ray skin treatments performed by Mrs. Davis, the X-ray technician, under his supervision.

Dr. Price took an average of one to two minutes for an ordinary chest and skeleton interpretation of an X-ray and an average of about five minutes for a gastro-intestinal series and gall bladder series. Dr. Price did not spend more than two minutes per patient on skin treatments; that is, administering X-ray dosages. The actual time spent by him was just a fraction of a second. The preparatory work was done by the X-ray technician. The average time spent in fluoroscopic examinations wasn't more than five minutes, and that includes preparation of the patient. The actual examination was probably less than one minute.

The monthly averages of Dr. Selders while Dr. Brown was medical director were 533 in January, 481 in February. Dr. Selders' daily average was 20 a day.

Dr. Hulburt in January saw 644 patients and in February 428 patients. His average for the day was 22.

Dr. Price in January saw 333 patients and in February 375 patients. His average was 15 a day.

There was no time during those two months, January and February of 1938, when any doctor in the clinic treated as many as 60 patients. Daily and monthly summaries of patients seen by various doctors in the clinic were kept in November and December, but they were only the total summary of patients seen.

While I was with GHA from November, 1937, until December, 1938, in my view Group Health most certainly supplied its members with adequate medical care, because we

could give the patient better and more adequate medical care than we could as private practitioners.

Cross-examination.

By Mr. Leahy:

I have the report for the patients treated from November 1, 1937, to May 31, 1938, and the summarization thereon is made from the records the clinic kept. And during that time we had on our staff Dr. Selders, Dr. Price, Dr. Scandiffio, Dr. Cahoon, and Dr. Dabney, although I am not certain about Dr. Dabney; Dr. Montgomery came in February, and the same applies for Dr. Edgington. Dr. Chase came in March. Dr. Marshall was only with us a day or two. Dr. Richardson was there from January through July, 1938. Dr. Cahoon came on at the time Dr. Hulburt resigned.

In the period from November 1, 1937, to May 1, 1938, the report shows that Group Health treated 19,130 patients. The report shows that the number of patients in the clinic was 19,130 for that period of time. The 19,000 and some odd included medical care, surgical, eye, ear, nose, and throat, pediatrics, obstetrics, also laboratory tests, physiotherapy treatments, basal metabolism, electric treatments, cardiographs, X-rays, and fluoroscopic examinations.

It shows that, and it is broken down into 6,218 medical cases, 2,443 surgical cases, 2,770 eye, nose, and throat cases, 2,179 pediatrics cases, 94 obstetrical cases, and 58 hospital cases, 1,308 home calls, 215 hospital calls, 248 cases with consultants, 3,464 physiotherapy cases, 1,735 ultraviolet-ray treatments, 1,729 short-wave treatments, 330 basal metabolisms, 66 electrocardiographs, 822 X-rays, 473 fluoroscopic examinations, 5,864 prescription cases, 5,528 laboratory and clinical laboratory report cases, 422 eye refractions, 16 eye, ear, nose, and throat cases in the clinic; treatments being given to 9,278 members and 9,013 dependents.

Many of our chest X-rays were simply routine procedures, not for the detection of pathology. If a plate showed pathology, the average time spent in interpreting it would be more. The average interpretation of a pathological X-ray plate should take at least five minutes. Pathology in a plate can be detected within a minute.

In testifying on direct examination and in testifying on the time of interpretation of these X rays I am not testify-

ing from the records. I didn't stand by and see each X ray taken but saw many taken by Dr. Price, but not every one. I watched him make some examinations and interpret some plates. There wasn't any routine in giving X-ray examinations, but they were given in most cases if the patient requested an X ray, and in cases that we thought required X rays and on chest X rays I say that Dr. Price spent an average of from one to two minutes, and on X rays involving the gastro-intestinal tract about five minutes, but there is nothing in the record to indicate how much time he spent on X rays, and my testimony is that in cases where I saw Dr. Price interpreting such X rays he would take a minute or two in ordinary cases, and in cases of gastro-intestinal X ray he would take four or five minutes. I saw roughly Dr. Price interpret about ten X rays a week. I can't give the daily average as I wasn't with Dr. Price every day. The actual time spent by Dr. Price on fluoroscopic examinations was a matter of seconds, a minute or two at most. I didn't attend and see Dr. Price making many fluoroscopic examinations, and I can't give you the weekly average on those.

Dr. Price also attended patients outside the clinic, on house calls. I can't break down on a daily average how many he saw; I would say it was roughly one or two a day. All our doctors would make calls on patients who were sick at home. I have no breakdown of the monthly home calls. I have the total for the period of February 1 to August 31: 1,308 home calls. Seven doctors in that period were making home calls in the District of Columbia, Virginia and Maryland. The hours at the clinic are from 9 to 6 on week days and 9 to 1 on Saturdays.

Dr. Price resigned in January, 1939. I do not have Dr. Price's book that contains his record and have never examined Dr. Price's book myself. I don't know that the only patients Dr. Price saw were those shown on the records from which I testified. I do know that the patients, the names listed and the numbers listed are the exact copies of his own records. I do know it, that the names listed do not agree with the number of patients seen by him. He saw less patients than are listed on his records.

Q. You mean that the records he made show as patients seen people in fact he did not see?

A. That is correct. I testified that he included telephonic conversations, casual meetings in the hall with patients, injections,—not injections—X-ray interpretations were listed as patients seen, when they were not seen.

I testified on direct that all throughout this period I believed that GHA was supplying adequate medical care to patients and that we could give better care to patients than we could in private practice. I know Dr. Wall very well and served with him a good while before joining Group Health. He was my preceptor, in a manner of speaking. Dr. Price, Dr. Selders, and I did not go to Dr. Wall and Dr. Macatee and offer to resign in a body from Group Health at the very time about which I am talking, because we couldn't give adequate medical care to patients. Dr. Price, Dr. Selders and I did go to Dr. Wall's home and talked with Dr. Wall, but we did not offer to resign, though we discussed the resignations of us from Group Health. At that time we did not state that we thought that all others on the staff of Group Health would resign also, and we did not ask Dr. Wall and Dr. Macatee to help us. We did not state what would happen if we all resigned at once and did not state that that would break up Group Health if we resigned in a body, but I did state that it might break up Group Health if we all resigned. I don't recall that Dr. Wall and Dr. Macatee said no, they couldn't do anything for us, as there was no occasion for an answer like that.

Redirect examination:

The conversation with Dr. Wall and Dr. Macatee occurred in the fall of 1938. When Dr. Wall and Dr. Macatee were seen by Dr. Selders, Dr. Price, and myself at Dr. Selders' request, Dr. Selders being thoroughly dissatisfied with his position, we discussed exactly what Mr. Leahy brought out in my testimony. We asked Dr. Wall to meet with the three of us. At the time of the meeting Dr. Selders and Dr. Price asked certain questions of Dr. Wall and Dr. Macatee, particularly regarding the Medical Society privileges and hospital privileges. The question of resignations was brought up, that is, the question of our resigning from Group Health staff was brought up at the time and discussed by all of us, but not in connection with hospital privileges and membership in the Medical Society. The question

of hospital privileges and Medical Society privileges was brought up by Dr. Selders and Dr. Price.

MRS. CAROLINE REECE EPPERLY, a witness for the Government (recalled).

Direct examination.

Gov. Ex. 291 is a correct copy of a letter from President Taylor of Sibley to Dr. Burns of Worcester Hospital. Gov. Ex. 292 is Dr. Burns' reply to Gov. Ex. 291. Gov. Ex. 298 is a copy of Dr. Taylor's letter to Dr. Brown. Gov. Ex. 299 is Dr. Brown's reply to Gov. Ex. 298. Gov. Ex. 295 is a correct copy of a letter from Dr. Taylor to Dr. Walter E. Lee of the University of Pennsylvania, which I took and sent to Dr. Lee. Gov. Ex. 296 purports to be a reply to Gov. Ex. 295. Gov. Ex. 672 is the application blank of Dr. Raymond E. Selders and lists the names thereon as references: Dr. Lee, Dr. Burns, Dr. Brown.

Cross-examination.

By Mr. Leahy:

I do not know Dr. Brown of the Temple University. I never saw him write.

I do not know Dr. C. J. Burns. I never saw him write. And all I know is that I received a subpoena to produce certain papers and documents, and pursuant to that subpoena I produce those documents from my files.

RAYMOND R. ZIMMERMAN, a witness for the Government (recalled).

Direct examination.

By Mr. Lewin:

I recall a dinner on the evening of June 24, before going to the Medical Society, attended by Mr. Penniman, Dr. Brown, and myself. I didn't tell Dr. Brown in connection with the anticipated meeting at the Medical Society to tell the Society doctors as little as possible, and that was not

the spirit of the meeting. I didn't say to Mr. Penniman to say as little as possible. There were no such instructions given at all. After the dinner we went to the Medical Society building, and in the lobby I didn't say to Dr. Brown or Mr. Penniman, "Don't forget, we'll give them just as little as possible." In the meeting we gave the Society a full statement of the purposes of Group Health.

I never gave instructions to Dr Brown that he was not to deal with the hospitals and I never heard any such instructions given. I never heard any instructions to Dr. Brown that he should send me or the president of Group Health mail received addressed to him, unopened. So far as I know Dr. Brown was never restricted, and I never did anything to restrict him and I do not know of anything being done to restrict him.

WILLIAM F. PENNIMAN, a witness for the Government (recalled).

Direct examination.

By Mr. Lewin:

I was the first president of Group Health. I recall a meeting on June 24, 1937, between Mr. Zimmerman, Dr. Brown, and myself. At that meeting I didn't make any remark to Dr. Brown that he should tell the District Medical Society as little as possible about the plans of Group Health. I didn't hear Mr. Zimmerman make any such remark. I didn't make any remark in the lobby of the Medical Society building to Dr. Brown or Mr. Zimmerman that, "Now, don't forget, we will give them as little as possible." I didn't hear Mr. Zimmerman make any such statement. At the meeting we did not follow the course of telling the doctors as little as possible. I received a report from Dr. Brown on Dr. Selders, Gov. Ex. 671. As president of Group Health I at no time limited Dr. Brown's medical activities and didn't exclude him from approaching the hospitals on behalf of the staff of Group Health. I didn't give Dr. Brown any instructions that he should send to me unopened mail he received from the hospitals, and nothing to that effect was done. I kept Dr. Brown informed about my correspondence with the hospitals.

The third page of Gov. Ex. 671 was received in evidence and read to the jury as follows:

Gov. Ex. 671 is a letter from Henry Rolfe Brown, Medical Director, to Mr. Penniman, President, Group Health Association, dated October 1, 1937, to which is attached information regarding the staff of Group Health which had been obtained up to that time.

I am permitted to read to you the third page of the report which relates to Dr. Raymond E. Selders. It gives his name, Raymond E. Selders: age, 44: nativity, born in Illinois: position, surgeon: salary, $4,800.

"Religion, Protestant.

"Marital Status. Married (No children).

"Licensed: Oklahoma, Texas; licensed in New York and Massachusetts by endorsement of Nation Board Credentials.

Licensed District of Columbia.

Degrees: BA University of Oklahoma, 1918; BS ChE University of Oklahoma, 1919; BS in Medicine, University of Oklahoma, 1925; MD University of Oklahoma, 1927; MSC University of Pennsylvania, 1937.

Experience:

July 1927 to July 1928: Interned, St. Joseph's Infirmary (209 beds) Houston, Texas.

July 1928 to October 1935: General Practice including surgery, Houston, Texas.

October 1934 to June 14, 1936: Post Graduate work at Graduate School of Medicine, University of Pennsylvania, Philadelphia, Pa.

1936-1937: Resident Surgeon, Worcester City Hospital (600 beds) Worcester, Massachusetts. Has performed about 338 operations which was a part of the clinical and post graduate work taken by Dr. Selders for the purpose of securing the diploma and degree of Master in Surgery.

Dr. Selders is an experienced surgeon and has been in practice for about seven years and is splendidly qualified by his experience as a general surgeon.

Address: Home 2445 15th Street, N. W.

Telephone: Adams 5302."

The Government concluded its case.

SURREBUTTAL EVIDENCE ON BEHALF OF THE DEFENDANTS

DR. HENRY ROLFE BROWN, a witness recalled by the defendants.

Direct examination.

By Mr. Leahy:

I identify the third page of Gov. Ex. 671 as a letter of recommendation for Dr. Selders and the others for a position on the staff of the clinic of GHA. When I said in that letter: "Dr. Selders is an experienced surgeon and has been in practice for about seven years and is splendidly qualified by his experience as a general surgeon," I referred to his work in the clinic, as we had no general outside work, of course, in the hospitals and Dr. Selders was to take care of the clinic and the minor surgery in the clinic.

DR. EDWIN A. MERRITT, a witness recalled for the defendants.

Direct examination.

By Mr. Leahy:

I am a practicing physician in the District. I have specialized in radiology, which is the use of radium energy in the diagnosis and treatment of diseases, both X ray and radium. I graduated from the University of Nebraska in 1904; after seven years of country practice I went to the Rush Medical School in Chicago and specialized in internal medicine; following that course I took a further course and studied X ray in Council Bluffs, Iowa, in 1912; since that time I have confined my practice exclusively to radiology.

There are two different procedures for X raying and diagnosing conditions of the chest; one consists of taking X ray films or plates of the chest, and the subsequent reading of them. That involves one period of time. There is another medical examination which is used sometimes, a fluoroscopic survey of the chest is made, and then a plate is made. The first procedure takes a period of time and this takes another period of time. From the start it would take 30 minutes to make a fluoroscopic examination of one person's chest. In taking an X ray of the chest the matter of getting a person undressed takes the larger part of the

time; the taking of the film is a matter of a few seconds; developing is ten minutes, drying 30 minutes, and reading five minutes. A fluoroscopic examination is an examination of the patient before a fluorescent screen, and it penetrates the patient's body and is reflected on a screen. It must be done in an absolutely dark room and the eyes must be perfectly accommodated to it. It takes as a minimum 25 to 30 minutes to make such an examination because you have to allow 25 minutes for adjustment of the eyes in the dark room. That is an invariable rule. The actual examination consumes perhaps five minutes. It takes longer to interpret an X ray of the gastro-intestinal tract than of the chest, as a complete gastro-intestinal involves a study of an individual over three successive days, and the reading of the film requires 10 to 15 minutes, reviewing the fluoroscopic evidence; the evidence secured in the three previous examinations, reviewing that evidence plus the films that are taken, consumes perhaps 10 minutes, maybe 15 minutes. That process could not be done in four or five minutes. An X ray of the chest cannot be taken and interpreted in a minute. Where pathology is indicated—that is the presence of abnormality—it leads to additional study and takes longer, because if the conditions are obscure we might spend hours on an X-ray examination.

Cross-examination.

By Mr. Kelleher:

The interpretation of an X-ray plate is the study of the plate after the picture has been taken, and in an X ray of the chest that interpretation takes five minutes; one of the Gastro-intestinal tract would require, on the average, fifteen minutes for interpretation.

Dr. Joseph S. Wall, a witness recalled by the defendants.

Direct examination.

By Mr. Kelleher:

I am a practicing physician in Washington, where I have been in practice 45 years; I graduated from Georgetown University Medical School in 1897; I did postgraduate work in the New York Postgraduate School and at Oxford, Eng-

land; I specialize exclusively in pediatrics and have done so for 30 years.

I have known Dr. Scandiffio eight or ten years; he was associated with me at Children's Hospital for a number of years and associated with me in teaching of pediatrics at Georgetown Medical School. I recall in the early fall of 1938 a conversation between Dr. Selders, Dr. Price, Dr. Scandiffio, Dr. Macatee and myself. The substance of the conference was that the doctors from Group Health were so dissatisfied with the work which they had to do down at the clinic that they wanted to resign in a body. The Group Health doctors asked me if I would try to do something for them so that they could have a living, or words to that effect, if they resigned, and asked if we thought if they did resign would they be taken back into membership in the Society and, secondly, Dr. Selders asked if he could be accorded hospital privileges if he resigned from Group Health. The Group Health doctors said that the other members of the staff of Group Health would probably resign in a body if they resigned, and that would probably result in breaking up Group Health.

Cross-examination.

By Mr. Lewin:

I have been a member of the Medical Society for 40 years. Two years ago I was put on a life membership. I have been on its Executive Committee the three years following 1926. I made a statement to Dr. Woodward that I regretted that Dr. Scandiffio had "gone into the camp of the enemy," meaning Group Health, and stated my belief the Group Health doctors "will have visited upon them the displeasure of the medical profession in Washington and will probably become medical outcasts so far as we are locally concerned," and further stated, "We should certainly be grateful for the help which may be accorded us by the AMA."

Dr. Henry C. Macatee, a witness recalled for the defendants.

Direct examination.

By Mr. Leahy:

I recall a conversation held in the fall of 1938 at the office of Dr. Wall, at which Drs. Scandiffio, Price, Selders,

Wall, and myself were present; the conversation was had between us; Dr. Scandiffio, Dr. Price, and Dr. Selders said they were dissatisfied with the work which they were called on to do at Group Health clinic and were prepared to resign in a body, and they stated, in effect, if they resigned probably the other members of the staff would resign likewise, and that would probably break up Group Health, if they all resigned in that fashion; then Drs. Scandiffio, Price, and Selders asked us to try to do something for them in the shape of helping them out if they did resign and if the remaining members of the staff of Group Health resigned.

The defendants rested.

Thereupon the defendants jointly and severally moved the Court as follows:

To strike from the record and advise the jury not to consider any and all evidence submitted in the record relating or having reference to the so-called background of the conspiracy and consisting of evidence with respect to acts and deeds of the defendant American Medical Association, its officers and agents, occurring and transpiring outside of the District of Columbia and prior to January 1, 1937, upon the ground that such evidence and the whole thereof is incompetent, irrelevant, and immaterial to any of the issues in the above-entitled action.

To strike from the record and advise the jury not to consider any and all evidence submitted in the record relating or having reference to the so-called Washington hospitals for the purpose of proving that said hospitals were co-conspirators with the defendants herein upon the ground and for the reason that said evidence and the whole thereof is insufficient, as a matter of law, to make or constitute the said hospitals or any of them co-conspirators as charged by the Government and alleged in the indictment.

To direct and advise the jury to return a verdict of not guilty in the above-entitled proceeding upon the ground and for the reason that the record in said case, and the whole thereof, shows as a matter of law that Group Health Association, its officers, members and operations were, with reference to all matters shown in the record, unlawfully engaged in the practice of medicine in the District of Columbia in violation of the laws applicable thereto, and were

not, and none of the[illegible] unlawfully subject to or affected by any alleged restr[illegible]ts as charged and identified in the indictment.

To direct and advise the jury to return a verdict of not guilty in the above-entitled proceeding as to all defendants, upon the ground and for the reason that the facts, acts, and circumstances, as shown by the evidence, and the entire record herein submitted does not establish or tend to establish any conspiracy to violate Section 3 of the Sherman Act relating to trade or commerce, as set forth or defined in said Act.

To direct the jury in the above-entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining the Washington hospitals in the business of operating such hospitals."

To direct the jury in the above-entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining doctors (not on the medical staff of Group Health Association, Inc.) practicing in the District of Columbia, including the doctors so practicing who are made defendants herein, in the pursuit of their callings."

To direct the jury in the above-entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining the doctors serving on the medical staff of said Group Health Association, Inc. in the pursuit of their callings."

To direct the jury in the above-entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining the members of Group Health Association, Inc. in obtaining, by cooperative effort, adequate medical care for themselves and their dependents from doctors engaged in group medical practice on a risk sharing prepayment basis."

To direct the jury in the above-entitled cause to return a verdict of not guilty as to each and all of the aforesaid

defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining Group Health Association, Inc. in its business of arranging for the provision of medical care and hospitalization to its members and their dependents on a risk sharing prepayment basis."

To direct the jury in the above-entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants.

And for cause therefor defendants state that no sufficient case has been made out against them and each of them under the indictment herein returned, to warrant and support a verdict on all or any of the charges alleged in said indictment.

Mr. Magee: The defendants at this time desire to summarize very briefly the grounds of the motions filed in the case for a directed verdict of "not guilty."

First, all of the grounds urged upon the Court in support of the motions of the defendants for a directed verdict, presented at the close of the Government's case, are reasserted in support of the pending motions.

Second, it is contended that the evidence has failed to establish any violation of Section 3 of the Sherman Act by all or any of the defendants.

In addition none of the activities charged to the defendants or proven in the evidence concern trade or commerce in the District of Columbia.

The activities particularly of Group Health Association, Inc., its members and doctors are part and parcel of the illegal practice of medicine and the illegal operation of an insurance business, and any restraints thereon are not in violation of the Sherman Act.

All of the activities charged to defendants are within their lawful rights and do not violate Section 3 of the Sherman Act.

The defendants, the members of defendants, American Medical Association and the Medical Society of the District of Columbia, Group Health Association, Inc., its doctors and members are all shown by the evidence to be engaged in the same trade or occupation, or have direct or indirect

interests therein. The evidence further discloses that these parties are in a controversy concerning, involving or growing out of a dispute concerning terms or conditions of employment pertaining to the care and treatment of patients and their hospitalization, or concerning the association or representation of persons, in negotiating, fixing, maintaining, changing, or seeking to arrange terms and conditions of employment of physicians in the care, treatment, and hospitalization of patients. This establishes the existence of a "labor dispute" and renders the activities charged or proven against the defendants legal under the terms of the Norris-La Guardia Act (Act of March 23, 1932, 29 U. S. C. A. 101-115) and of the Clayton Act (38 Stat. 738, 29 U. S. C. A. 52).

"United States v. Hutcheson (No. 43, October Term, 1940, decided February 3, 1940) —— U. S. ——.

Milk Wagon D. Union v. Lake Valley F. Products, 85 L. Ed. 91.

New Negro Alliance v. Grocery Company, 303 U. S. 469.

Apex Hosiery Co. v. Leader, 310 U. S. 469, 507, m. 26.

Senn v. Tile Layers Protective Union, 301 U. S. 468.

For the foregoing and other reasons apparent on the face of the record and in the evidence it is submitted a verdict of "Not Guilty" should be directed as to each and all of the defendants.

The Court overruled all of the defendants' motions and allowed an exception.

The Requests or Prayers for Instructions of the United States

The United States, at the close of the evidence, requested that the following instructions or prayers on the law be given the jury:

1

All of the defendants have entered pleas of not guilty to the indictment. The defendants, therefore, have entered upon this trial presumed by the law to be innocent of any crime until proven guilty and that presumption continues with the defendants until you reach your verdict. Granted. J. M. P.

2

The burden of proving the defendants guilty is upon the Government. This does not mean, however, that the Government's proof must establish the defendants' guilt to an absolute certainty. You may find the defendants guilty, if you are convinced beyond a reasonable doubt of all the essential facts necessary to establish the guilt of the defendants. Granted. J. M. P.

3

A reasonable doubt must be real and not imaginary. It must be an honest and substantial misgiving for which a good reason may be given, based upon the nature of the evidence or lack of evidence in the case. If all the evidence in the case, impartially and reasonably considered, produces in your minds a settled conviction or belief of the defendants' guilt—such an abiding conviction as you would be willing to act upon in the most important affairs of your own life—you may be said to be free from any reasonable doubt, and should find a verdict in accordance with that conviction or belief. Granted. J. M. P.

The Court: No. 3 sounds correct. It is not exactly the way I give it, but it is on the same lines. It is on reasonable doubt.

Mr. Burke: I think, your Honor, between the dashes it is not just right—

"such an abiding conviction as you would be willing to act upon in the most important affairs of your own life."

The Court: That is an old, approved instruction. Objection overruled and exception noted.

4

In considering the testimony, you should, as to each witness, consider his demeanor and manner of testifying, his interest, if any, in the result of the trial, any temptation to testify falsely, his opportunity to know the facts, the probability or improbability of the testimony given, and all other like circumstances appearing from the evidence; and, from all these, you should determine the weight and credit to be given to the testimony of the witness. In case you become satisfied from the evidence that any witness has wil-

fully testified falsely as to a material fact, you are at liberty in your discretion to disregard all the testimony of the witness. You may, however, in your discretion, elect to give credit to a part of his testimony and to give no weight to the rest. Granted. J. M. P.

7

While all of the defendants in this case have been jointly indicted and tried, each defendant is entitled to an independent consideration by you of the evidence as it relates to his conscious participation in the unlawful acts charged by the indictment. It is your duty to determine separately the guilt or innocence of each individual defendant and of each defendant society. Granted. J. M. P.

10

The indictment in this case charges the defendants with engaging in a combination and conspiracy in violation of Section 3 of the Sherman Antitrust Act. Where two or more persons are united together to accomplish an illegal object, they are engaged in a conspiracy. In determining whether a conspiracy exists, it is not necessary for you to find that there was a written or formal agreement among the defendants, or that any participant in the conspiracy was bound to another to perform any portion thereof. It is sufficient to establish a conspiracy if, from all of the evidence, it appears that the defendants were voluntarily acting together—however informally—in order to carry out their common objectives. Granted J. M. P.

Defendants objected on the ground that it is confusing; that there must be found an agreement and that this prayer doesn't leave that impression. Objections overruled and exception noted.

11

It is not necessary that all of the parties to a conspiracy shall actually meet together at one and the same time and place, or that all discuss its purposes or the means of carrying its objectives into effect, or that each party know all of the other parties. Nor do you need to find that all of the participants combined together at the start of the conspiracy. If it is shown that the conspiracy was entered into between two or more of the defendants and that at any later time during its existence new or additional parties,

while aware of its existence, united with them for the purpose of aiding in the accomplishment of the scheme, they are from that moment fellow conspirators and equally responsible for all of the consequences which flow from the conspiracy. Granted J. M. P.

12

You will understand that mere passive knowledge of the existence of a conspiracy or mere passive knowledge of the acts of others in connection therewith is not sufficient to make the one having such knowledge a member of the conspiracy. Granted as amended. J. M. P.

13

Once you find a conspiracy to exist, the acts and declarations, both oral and written, of each party to the conspiracy in furtherance of the objects thereof may be considered as evidence against all of the parties to the conspiracy. This is true even though the party doing such act or making such declaration is not on trial or is not named in the indictment as a defendant. That is, every person who, knowing of the conspiracy, does any act or makes any statement intended to further the objects thereof, does thereby become party to the conspiracy. Granted as amended. J. M. P. Exc.

Defendants objected on the ground that it is too broad; assumes a conspiracy; incorrectly states the law applicable to the facts involved; incorrectly states the law as to how a person becomes a party to an unlawful conspiracy and incorrectly states what evidence is necessary to make a party a co-conspirator. Objections overruled and exceptions noted.

14

The indictment in this case charges, in substance, that the defendants combined and conspired together (1) for the purpose of restraining Group Health Association, Inc., in its business of arranging for the provision of medical care and hospitalization to its members and their dependents on a risk-sharing prepayment basis; (2) for the purpose of restraining the doctors serving on the medical staff of Group Health Association, Inc., in the pursuit of their calling; (3) for the purpose of restraining doctors not on the medical staff of Group Health Association, Inc., practicing in the

District of Columbia, in the pursuit of their calling; and (4) for the purpose of restraining the Washington hospitals in the business of operating the hospitals. Granted. J. M. P.

"Mr. Richardson: Does fourteen do any more than bring in the indictment?

"The Court: I thought not. I notice you folks leave out two; it charges only part of one. You see, you first charged Group Health.

"Mr. Burke: I think it is an important part of our case because G. H. A. and its local members are two entities, are different. I think if that is so, your Honor should sustain the motion as to the second point.

"Mr. Magee: The Court of Appeals didn't approve that member charge.

"The Court: They approved the whole thing. They gave it a badge of honor.

"Mr. Kelleher: In any event, we are doing what the defendants want us to do.

"Mr. Burke: We are moving that it be stricken.

"The Court: The way it can be handled, as to the second paragraph, you can simply disregard that. It simplifies it.

"Mr. Kelleher: I think you have that affirmatively.

"The Court: We are talking about a lot of things that the jury never pay any attention to. I am going to state this indictment in my own way. I will grant this."

Objections overruled and exception noted.

22

If you find that the defendants were engaged in a combination such as I have explained, it is unnecessary for you to decide whether Group Health Association or its staff may have violated the Principles of Medical Ethics of the American Medical Association. Thus, even if such were the facts, it is immaterial that Group Health Association may have employed doctors on a contract basis, or that the members of Group Health Association may not have had complete freedom of choice of physician from the entire body of doctors practicing in the District of Columbia, or that Group Health Association or its organizers may have solicited Government employees to join Group Health Association. It is likewise immaterial to the issues which you must decide that the defendants may have believed that Group Health Association or the mem-

bers of its medical staff violated the Principles of Medical Ethics of the American Medical Association. None of these matters should be considered by you in reaching your verdict. Granted. J. M. P.

"Mr. Richardson: Of course, twenty-two cannot be so. That is, it cannot be so and keep the society in existence.

* * * * * * *

"Mr. Leahy: The trouble is that you are argumentative in your instructions. You cannot assemble points of evidence and throw them to the Court and ask the Court to argue it for you.

"The Court: Well, I think you are entitled in a colorless way to have the rule stated, without argument, that if they did in fact conspire to restrain, and they find that beyond a reasonable doubt, then the use of ethics and these other things as justification for it would afford no justification. That is very roughly stated, but that is what you mean.

"Mr. Lewin: That is it.

"The Court: I will revise it.

* * * * * * *

"Mr. Kelleher: I think it is a very fair statement there. It is an uncolored unargumentative statement. I think in view of the stress laid upon these immaterial issues by both sides it ought to be given.

"Mr. Lewin: If a conspiracy did exist then the employment of ethics to restrain it would not justify it. The plea of the defendants that the object was unethical cannot justify their conduct.

"Mr. Leahy: No, you cannot say that. We have the right to use that in persuasion.

"The Court: You have the right to this: I don't think the matter of belief is material for this reason: that you have the right to argue and it doesn't matter whether your argument is right or wrong, whether you believe it or not. I have a right to argue as demagogues do every day on the street, or some fakers on the avenue, if I do not transcend the law by obtaining money under false pretenses. The fact that I may not be sincere in what I say makes no difference.

"Mr. Richardson: That is all right if you follow it up, but here we are charged with being actuated by an improper motive.

"Mr. Lewin: Your motive isn't material. The purposes with which you did what was done as charged in the indictment. If the jury finds you did those things purposely, then you have restrained G. H. A.

"Mr. Richardson: We don't care anything about the indictment.

"Mr. Laskey: They cannot consider it as evidence.

"The Court: I instruct them very carefully that the indictment is no evidence and raises no presumption of guilt, but on the contrary there is a presumption of innocence.

"Mr. Lewin: We would like to get away from these good motives.

"Mr. Richardson: I don't blame you.

"The Court: You said this was not sufficient?

"Mr. Kelleher: Here is what we were after in this charge: that it makes no difference if they find that Group Health did in fact violate the principles of ethics or that the defendant believes that they did.

"The Court: Yes, I understand. Of course, I shall tell them that it is unquestionably the law they are not required to live up to the ethics of the Medical Association. They are not required to have the ethics and standards of the Association. If they didn't have it, it would make no difference.

"Mr. Richardson: And if as a result of their not living up to the principles of ethics and they desired to associate with those who do, and are not accepted, they get what they deserved.

"Mr. Leahy: You can't make anybody consult with somebody else.

"Mr. Kelleher: If they refused to consult in order to drive G. H. A. out, it is illegal regardless of the reason. Even if they thought it was unethical.

"The Court: If they thought it was agreed that 'we are going to rush G. H. A., put it out of business; and we are going to do it by enforcing our rules of ethics' against them, then, of course, you have a conspiracy.

"Mr. Richardson: But you cannot take the action that was directed against G. H. A. and prove backwards by inference how the thing started.

"The Court: No, I can't say to the jury you have to assume that they did these things. The first thing is to find out whether they had a conspiracy.

"Mr. Leahy: What you want the Court to say is the refusal to consult amounts to conspiracy.

"Mr. Lewin: Well, here is a concerted refusal.

"Mr. Kelleher: If it is a refusal to consult for the purposes charged in the indictment, it is illegal.

"The Court: I am underscoring here 'if a conspiracy'; then 'employment of ethics, et cetera, to restrain would not be a defense'; the violation of ethics by G. H. A.

"Mr. Lewin: Or the belief on the part of the defendants that G. H. A. had violated these ethics.

"Mr. Leahy: I would like your Honor also to state that these various pieces of evidence are not proof per se of conspiracy.

"The Court: I shall tell them that there was no legal obligation, legal ethical obligation on the part of any physician to consult with any other physician.

"Mr. Leahy: Therefore even though they find that the members of the society refused to consult with G. H. A., they must further find that that was done with intent to destroy it.

"The Court: You see, let us assume that these regulations against consulting, et cetera, is an unlawful agreement to restrain physicians in medical practice. That is not what you are charged with. We don't have to deal with that.

"Mr. Richardson: No, but you have this situation: Here is a group of people in a meeting. Oh, they are confederating; one says something; they are all conspirators because of the very fact they were in a meeting. You are dealing with a society.

"The Court: I know you are arguing the matter now, but as a matter of fact anything that brings alleged conspirators together is a thing that may be considered by the jury whether it is reasonable or not, and the thing, in view of the fact that they are members of the society, will be argued on the one side; and whether it is unreasonable and may be treated as the act of a conspirator, may be argued on the other. That is a matter for argument. I cannot say the fact that men got together, this is some evidence. I can't consider it one way or the other, and I don't want to."

* * * * * * *

"Mr. Magee: So you make that clear, that reasonable belief."

Objections overruled and exception noted.

23

If you find that the defendants were engaged in a combination such as I have explained, it is unnecessary for you to decide whether the medical care given by the medical staff of Group Health Association was equal to, superior to, or inferior to, the quality of medical care rendered by doctors engaged in private practice. The quality of medical care rendered through Group Health Association is immaterial to the issues in this case and you are not to consider it in reaching your verdict. Granted. J. M. P.

"Mr. Richardson: Twenty-three.

"Mr. Magee: It is exactly the same.

. . . . . .

"Mr. Leahy: That falls in the same category as the other.

"The Court: I have it marked with a question.

"Mr. Kelleher: I think in view of the stress laid upon it it is certainly a relevant issue in your Honor's mind; certainly should be clarified.

"The Court: But you all stepped into it.

"Mr. Richardson: I don't think it is a false issue. The last sentence here is dead wrong.

"Mr. Leahy: The whole thing is dead wrong.

"The Court: I think this can be treated in this way: that there has been evidence pro and con in this case as to the ability of Group Health to render good medical care. That question has been injected into the case by reason of contradictory statements of the parties which evolved around it. It goes to the question of credibility of witnesses rather than to make this a relevant, material issue in the case, and you may consider it in that way.

"Mr. Leahy: I think that is a little confusing.

"The Court: Even if the general opinion of people was that Group Health was rendering good medical care, you have a perfect right to argue it, unless you should go to the point of libel.

"Mr. Richardson: One of the theories of the entire build-up of the prosecution is that that is the way to give good medical service.

"Mr. Lewin: No; we were very careful to refer to it as a reasonable experiment.

"The Court: I do not know just how it should be treated, to be frank with you. It has been a problem with me.

"Mr. Kelleher: If there has been a conspiracy to drive this organization out, they cannot justify it by saying that they thought it was not giving adequate medical care.

"Mr. Lewin: It is the same thing as the $40,000 grant. It is the same thing as the principles of ethics.

"Mr. Richardson: We want to offer the proposition that one of the reasons why we did not want our members to have anything to do with this organization was because it was a fraud medically.

"Mr. Lewin: But you cannot make that argument, because you would run right into the teeth of the law.

"Mr. Richardson: We have a right to use persuasion on our members.

"Mr. Kelleher: That is a boycott, and you cannot justify a boycott.

"Mr. Lewin: Not on any such grounds.

"Mr. Richardson: We are justified in trying to control our own members for our own good.

"Mr. Lewin: That is a boycott.

"Mr. Richardson: No, it is not.

"The Court: A question that has been in my mind—and I have not resolved it one way or the other—is whether or not these things may not give a background in behalf of the defendants to reflect upon the reasonableness of the things they did.

"Mr. Kelleher: The reasonableness is not in issue if the facts of the indictment are found by the jury.

"Mr. Lewin: It is unreasonable per se if they find the facts stated in the indictment.

"The Court: If they find that a conspiracy was entered into which involved boycotting and coercion and that sort of thing, why, of course, then you could not justify it by the fact that G. H. A. may have been running a poor business. No matter what your beliefs were, you cannot hop over all those hurdles. But why should I not also say to the jury, 'However, as bearing upon the question of the intention or the intended effect of the acts of the defendants, you may

note the circumstances under which they did act as reflecting upon that intent and purpose.'

"Mr. Lewin: I do not see how they could. They either intended to destroy Group Health or they did not. That is the issue. That is the issue you are leaving to the jury.

"The Court: Suppose they were not attempting to destroy it, but merely attempting to protect themselves?

"Mr. Lewin: If it were a bad organization that would be one of the reasons for them to attempt——

"Mr. Leahy: It would be one of the reasons to protect themselves against it.

"Mr. Lewin: You have no right to protect yourselves by this kind of a conspiracy.

"Mr. Leahy: If you hit me, I have a right to hit you.

"The Court: I do not know whether it was in the Appalachian Coal case or in some other case, but it has been held that persons have a right to protect themselves in their business against——

"Mr. Magee: Against unfair practice in the industry. That is the language.

"The Court: Against their competitors. If that is all they have done it does not amount to a violation of the statute.

"Mr. Kelleher: They cannot refuse to deal for that reason. That is what is charged here. So they could not possibly justify it.

"The Court: I think we all agree on this, but it is just a question of how we are going to state it. You want me to state one part of it; they want me to state another part of it. If I state both parts of it, I suppose that will be all right. There is an element of intent.

"Mr. Lewin: You ought not to bear on that. These are reasons and beliefs. That is what these things are.

"The Court: The question is this: Did they intentionally do acts the natural and probable effect of which would be to restrain G. H. A.? If they did, then they are guilty.

"Mr. Lewin: Whatever their reasons.

"The Court: Whatever their ultimate motive may have been is unimportant. But as bearing upon the question of intent, as reflecting upon the question of intent, in order that you may determine what the intent and purpose were or what the natural and probable effects of their acts were intended to be, you may look into these things and see what they were dealing with, to determine whether or not their

purpose was to restrain them merely by argument and persuasion to protect themselves.

"Mr. Laskey: To protect themselves and the public.

"The Court: They were not so much interested in the public.

"Mr. Laskey: Would not that be a good reason, however?

"The Court: That is a thing that might be considered, of course.

"Mr. Kelleher: Then it means that this jury is required to find specific intent to restrain.

"The Court: They have either got to find intent to restrain or they have got to find that the things which were intended would have the natural and probable effect of restraining them.

"Mr. Kelleher: The mere fact that they agreed among themselves to refrain from dealing with the organization because they believed that the organization was offering bad medical care would not tend to show that they did not intend to agree together for that purpose. The effect of it was to prevent them from obtaining a status irrespective of whether the medical care was good or not.

"Mr. Richardson: So that if G. H. A. was a band of bank robbers, you could not mention it?

"Mr. Lewin: That is right.

"Mr. Leahy: If I go out and buy a gun, and you say, 'Do you want it to shoot a bank robber?' And I say, 'No; I intend to use it to protect myself'——

"The Court: I have got this marked in the same category as the others.

"Mr. Lewin: If it is covered in the same way we are agreeable to it.

"The Court: I will pass it as it is. My inclination is to refuse it and treat it along the lines of these others.

"Mr. Kelleher: That is perfectly agreeable, your Honor."

Objections overruled and exception noted.

24

If you find that the defendants were engaged in a combination such as I have explained, it is unnecessary for you to decide whether Group Health Association was financially sound. The financial condition of Group Health Association and the sources of its financial support during the period

of the conspiracy are immaterial to the issues in this case. It is also immaterial that the defendants may have believed that Group Health Association was financially unsound or that it was subsidized by other organizations. Such matters are not to be considered by you in reaching your verdict. Granted. J. M. P.

"Mr. Richardson: No. 24 is the same thing.

"The Court: I have them marked the same way. I am going to bulk these things a little more than you have got them here. I can shorten them."

Objections overruled and exception noted.

Defendants' objections as stated hereinbefore were overruled and the requests or prayers for instructions of the United States numbered 1, 2, 3, 4, 7, 10, 11, 12, 13, 14, 22, 23 and 24 were granted by the Court, with an exception to the defendants.

The Requests or Prayers for Instructions of the Defendants

The defendants, at the close of the evidence, requested that the following instructions or prayers on the law be given the jury:

1.

I charge the jury to return a verdict of "Not Guilty" as to each and every defendant, as to each and every restraint charged in the indictment. Refused. J. M. P.

2.

The jury is instructed as a matter of law that this case is a criminal prosecution, under an indictment returned by a special grand jury in and for the District of Columbia, for an alleged violation of Section 3 of the Sherman Anti-Trust Act, a Federal statute, which provides as follows:

"Sec. 3. Every contract combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, is hereby declared illegal. Every person who shall make any such contract or

engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the Court."

The burden of proof in a criminal case is on the plaintiff and in carrying this burden of proof the plaintiff must prove beyond a reasonable doubt that the defendants and each of them are guilty of the offense charged in the indictment. If, after hearing all the evidence in the case, the jury finds that the evidence concerning the guilt of the defendants is preponderated by the evidence of the defendants or if the evidence of the plaintiff and the defendants is evenly balanced or if there remains in the minds of the jury a doubt based on reason, so that the jury is not satisfied beyond a reasonable doubt that the defendants are guilty of the offense charged, then the verdict of the jury should be "Not Guilty" as to all defendants. Refused. J. M. P.

3.

The jury is instructed as a matter of law that the Government must maintain its burden of proof and must prove each defendant guilty of the offense charged beyond a reasonable doubt, and if the jury finds from all the evidence in the case that there is a doubt as to the guilt or innocence of some of the defendants, then the verdict of the jury should be "Not Guilty" as to all such defendants. Refused. J. M. P.

"Mr. Lewin: Prayer No. 3 omits the word 'reasonable'.

"Mr. Laskey: Your Honor mentioned the fact that it is not necessary to find all defendants guilty. Put in that way it might leave the inference that it is necessary to find one of them guilty.

"The Court: I did not mean to say that I would state it in that way. I merely made a note on here. The note is rather misleading in suggesting that it would not be necessary to find them all guilty. I will treat that a little differently so there will be no question about it. I am going to refuse that prayer just as it is, and you can check up on me when I am charging the jury and see that I do it correctly. I will cover it."

5.

The jury is instructed as a matter of law that before any verdict of guilty can be returned against any of the defendants that the jury must find from the evidence that trade in the District of Columbia is involved in the offense charged in the indictment. Section 3 of the Sherman Anti-Trust Act, which the indictment charges the defendants have violated, concerns only trade and commerce. In this particular case the indictment concerns only trade in the District of Columbia. Trade as involved in Section 3 of the Sherman Act has a definite and fixed meaning in law. Whenever any occupation, employment or business, is carried on for the purpose of profit, or gain or livelihood, not in the liberal arts, or in the learned professions, it is constantly called a trade.

If the jury finds from all the evidence in the case that the activities charged to the defendants do not concern trade of the District of Columbia within the meaning of the foregoing definition, then the verdict of the jury should be "Not Guilty" as to all defendants. Refused. J. M. P.

"The Court: The fifth prayer I am going to refuse. I will mark it Refused, with exception. You can have an exception to all of them that I refuse, so that if I do not cover them properly in my charge you have got your exception. That may be understood."

6.

The jury is instructed as a matter of law, if they find from the evidence, first that the activities charged to the defendants concern trade in the District of Columbia, then they must find from the evidence that the objects of the activities charged to the defendants or the activities of the defendants, directly, materially and unreasonably restrained trade in the District of Columbia before a verdict of guilty can be returned against all or any of the defendants. Refused. J. M. P.

"Mr. Kelleher: We object to Prayer No. 6 on the ground that it is confusing.

"The Court: I have it marked Refused.

"Mr. Leahy: Your Honor will cover it in the charge, will you?

"The Court: Yes. I have got to cover it. I am bound to."

8.

The jury is instructed as a matter of law that only such combinations and conspiracies are within the provisions of Section 3 of the Sherman Anti-Trust Act as by reason of intent or the inherent nature of contemplated acts, prejudices the public interests by unduly restricting competition or unduly obstructing trade. In applying this test, the jury is instructed that the probable fact that the defendants have combined is not enough to render their actions illegal. The legality of the acts charged to the defendants cannot be determined by the simple test of whether or not those acts restrained trade. Every combination or agreement concerning trade, every regulation of trade restrains. The application of the statute in each case is a question of intent and effect. In determining whether or not the actions, charged to the defendants directly, materially and unreasonably restrained trade, the jury should consider the economic conditions peculiar to the practice of medicine, the practice and rules of ethics which have obtained, the nature of the acts of the defendants, the nature of the defendants' alleged plan, the reasons which led the defendants to act as they did and the probable consequences of the carrying out by the defendants of the acts charged in relation to matters affecting the public interest in the practice of medicine.

If from all the evidence in the case the jury finds that the actions charged to the defendants did not adversely affect the public interest, then a verdict of "Not Guilty" should be returned as to all defendants. Refused. J. M. P.

"Mr. Kelleher: No. No. 8 we object to.

"Mr. Richardson. Is No. 7 allowed, Mr. Justice?

"The Court. Yes. I have marked No. 8 refused. One ground is that it is argumentative; the other is that it is an overstatement, if you know what that means.

"Mr. Magee. I followed the language of the court in that case.

"The Court. I have here, 'Not for jury to determine whether public interest adversely affected.'

"Mr. Kelleher: That is exactly right.

"The Court: The jury is only to determine whether the charge is proven. The next is that the jury does not determine public policy. That is a matter for the legislature."

9.

The jury is instructed as a matter of law that a combination or conspiracy is not unlawful unless it destroys competition to an extent injurious to the public interest. If the jury finds from the evidence in this case that the alleged combination or conspiracy charged to the defendants did not destroy competition to an extent injurious to the public interests then their verdict should be "Not Guilty" as to all defendants, as the Sherman Act is founded upon conceptions of public interest enacted not preventing probable injury to individuals, but the harm to the general public. Refused. J. M. P.

"The Court: No. 9 is the same as the other one. Refused."

10.

The jury is instructed as a matter of law that not all combinations and agreements affecting trade in the District of Columbia are condemned by the Sherman Act.

Where a combination or conspiracy was entered into with the object of properly and fairly regulating the practice of medicine in which the defendants are engaged or interested, such combinations or conspiracies are not a violation of Section 3 of the Sherman Act. If the jury finds from the evidence that the alleged combination or conspiracy was a reasonable regulation of the practice of medicine and further finds that the effect of its formation and enforcement on trade in the District of Columbia is but indirect and not its purpose or object, then a verdict of "Not Guilty" must be returned as to all of the defendants. Refused. J. M. P.

"The Court: I have No. 10 marked Refused. There is a contradiction in terms. The definition of a conspiracy is that it is an agreement to do a criminal thing.

"Mr. Magee. Not under the Sherman Act.

"Mr. Richardson. Justice Holmes expressly said that it may be either lawful or unlawful.

"Mr. Kelleher: He said that a combination may be lawful, but not a conspiracy.

"Mr. Magee: It is not every unlawful conspiracy that violates the Sherman Anti-Trust Law.

"The Court: I think you will find the conventional definition of a conspiracy is that it is an agreement to do a

criminal thing or to do something lawful in a criminal way. We can change those words. If the regulations and acts were not intended to restrain but were only reasonable regulation and acts for the government of the society, then there was no crime. I think that prayer ought to be refused. That is No. 10."

14.

"The jury is instructed as a matter of law that the defendants, American Medical Association and Medical Society of the District of Columbia, have the right to adopt rules for just and fair dealing among their members and the right of enforcement of these rules and regulations by such reasonable penalties as they may provide for their violation."

(The refusal of these defendants to approve any association or corporation affording facilities for the treatment and care of patients of the physicians or employing physicians for the treatment and care of patients is not improper or illegal and if the jury finds from the evidence that the compelling of members to abide by rules and regulations of these defendants and their members, including the individual defendants, from associating with or doing business with associations, corporations, or physicians who are not members of or have been approved by the defendants, such an effect is an indirect, immaterial and reasonable restraint of trade and does not violate Section 3 of the Sherman Anti-Trust Act.)[9] Granted as amended. J. M. P.

"(The Court:) I have two objections to prayer No. 14.

"Mr. Magee: It is in the ponderous and heavy language of the court in the Anderson case.

"The Court: The first sentence is all right.

"Mr. Richardson: We can find you fifty cases that approve the Anderson case.

"The Court: The first sentence is all right; there is no objection to that sentence. The next one is:

'The refusal of these defendants to approve any association or corporation affording facilities for the treatment and care of patients is not improper or illegal,' and so forth.

You have got me telling the jury it is not illegal, but I maintain that it may be illegal according to the intent or

[9] The portion in the parenthesis was denied.

the necessary effect of their act. You have got me stating categorically to the jury that it would not be illegal.

"Mr. Leahy: We will strike out after the first sentence.

"The Court: The third part of it is bad, because it is the court finding the facts for the jury.

"Mr. Kelleher: Let us say 'in and of itself' again there.

"The Court: You may say it is not done for unlawful purposes. I do not understand that any of the rules and regulations were adopted after the conspiracy began. The only charge is that you used them for the purpose of carrying out a conspiracy.

"Mr. Lewin: One was adopted, as a matter of fact, afterwards.

"Mr. Kelleher: May we have 'in and of itself' there?

"Mr. Richardson: Not in the first sentence. The first sentence is absolute.

"The Court: Your prayers cover that, do they not? What I shall probably do when I get to working on this is to couple this thing with the statement, 'However, if adopted for serving a reasonable and proper purpose and were subverted to the execution of an unlawful purpose,' and so forth.

"Mr. Kelleher: That is fine.

"Mr. Lewin: That is just what we had in mind.

"The Court: Is it all right to strike this out, gentlemen?

"Mr. Richardson: Yes.

"Mr. Leahy: Yes.

"The Court: It is granted as amended. I have put down, 'Couple the Government's prayer as to lawful use.'"

15

The jury is instructed as a matter of law that the defendants have the right to refuse to do business with or be associated with any person or persons engaged in activities in violation of law. And if from all the evidence the jury finds that Group Health Association, Inc., during the period of the alleged conspiracy, was engaged illegally in the practice of medicine, then the jury is justified in finding that the enforcement of the defendant's rules and regulations, and principles of ethics forbidding members to associate themselves with Group Health Association, Inc., or to consult with members of its staff, were reasonable regulations of the defendants' profession, and do not spell out an un-

lawful combination or conspiracy in violation of Section 3 of the Sherman Anti-Trust Act. Refused. J. M. P.

"The Court: No. 15 is refused."

16

The jury is instructed as a matter of law, if they find from the evidence that the activities charged in the indictment to the defendants concern and relate to the profession of medicine and that all of the restraints intended concern and relate to the practice of medicine, then the jury is instructed to return a verdict of "Not Guilty" as to all of the defendants because the profession of medicine is not a trade within the meaning of Section 3 of the Sherman Act. Refused. J. M. P.

"The Court: No. 16 is refused."

17

The jury is instructed as a matter of law that if they find from the evidence that Group Health Association, Inc., is a corporation, that it operates a clinic, that it employs licensed physicians and surgeons to treat its members, that it receives from its members dues or fees for such treatments, that its method of doing business destroys the proper doctor and patient relationship and renders the doctors on its staff the hired servants of the corporation, and that it is in fact thus practicing medicine illegally because a corporation as such lacks the qualifications necessary for a license to practice medicine in the District of Columbia. Any restraints found by the jury against Group Health Association, Inc., its members, its doctors, or other doctors in rendering services to the corporation are justifiable and a verdict of "Not Guilty" should be rendered by the jury as to all defendants. Refused. J. M. P.

"The Court: No. 17 is refused."

18

The jury is instructed as a matter of law that concerted action to remove a harmful and destructive method of practicing medicine, even though such removal may affect Group Health Association, Inc., does not violate the Sherman Act if it is not intended and does not operate to unreasonably

restrain trade in the District of Columbia and leaves the defendants free to compete with each other. Refused. J. M. P.

"The Court: I think No. 18 is all right except for this—I have marked it Refused, with a question mark, on the ground that I should not say to the jury that G. H. A. is harmful and destructive.

"Mr. Magee: It does not say that.

"The Court: It carries that inference. What are you talking about when you say 'concerted action to remove a harmful and destructive method of practicing medicine'?

"Mr. Magee: It hits at G. H. A., that is the theory of group practice as a whole. It may affect any one of the groups.

"The Court: The jury may say, 'The Judge says that it is a harmful and destructive method of practicing medicine.'

"Mr. Richardson: 'What is claimed to be a harmful and destructive method;' and so forth.

"The Court: I will refuse it as it is. I will make a little note here to see if I can cover it in a proper way. I will go over this and see what I think ought to go in."

23

I charge you that the acts alleged to have been done by the defendants, do not constitute a criminal conspiracy or to impose unlawful restraints upon anyone and particularly upon Group Health Association, Inc., its doctors, members or operations, if you find that such acts done or intended by the defendants were reasonable as regulations of professional practice, and in this connection I charge you rules of conduct in medical practice are important both to the profession and to the public, and such reasonable rules can best be made by the profession itself for the purpose of eliminating evils which may exist in the field of the medical profession. Refused, J. M. P.

"Mr. Kelleher: Now, 23: I think it is all covered.

"The Court: Well, I have this: that your arrangement of your language is misleading. It seems to me that way. It is rather assertive, coming from the Court and is quite argumentative. That first part, especially; I wouldn't state it that way to the jury.

"Mr. Leahy: Could you give us the thought in there, because it is expressed by the Court of Appeals that reasonable rules may be made by the profession itself.

"The Court: I would say,—I will take care of that.

"Mr. Lewin: I believe it is purely argumentative.

"The Court: No, they have a right to consider these regulations; whether they are reasonable as applied to a lawful purpose.

"Mr. Lewin: I am not sure that it is a matter of fact they have any such right.

"The Court: I am going to refuse the prayer as it is on the ground that the present arrangement of the language seems quite misleading to me, especially as to the first clause; and that last part of it is quite assertive and argumentative; and then I will make a note here to cover it in some other way."

31

I charge you that free and fair competition is just as desirable in the medical profession as in other activities within the purview of the Sherman Act; and I charge you further that the defendants were entitled, both collectively and individually, to adopt and carry out reasonable regulations in professional practice for the purpose of maintaining free and fair competition in the District of Columbia and to use all legitimate persuasion and reasoned argument thought proper to support what the defendants believed was free and fair competition in the medical profession, and that any restraints caused thereby upon Group Health Association, Inc., its doctors, members or operations, without more, would not violate the Sherman Act. Refused. J. M. P.

"The Court: 31. Is this bad? I say this ought to be refused. It would leave the jury to determine; it would make them the judges as to whether acts were illegal or not. I think that is right, is it not? 'What the defendants believed was free and fair competition' et cetera—I will refuse that."

32

I charge you that the defendants, both collectively and individually, had a right to examine into and to approve or disapprove for themselves and all others whom they might persuade to agree with them, any and all types, kinds and methods for the securing or administering of medical

service, and that the said defendants, either individually or collectively, had a right to reach such conclusion with respect to any particular plan for the furnishing of medical service as might seem proper to them, and that the said defendants had the right, both publicly and privately, to urge, advance and support that plan of medical service which, to them, seemed best, either in the interests of the defendants themselves, the interests of their Societies, the interests of the medical profession, or in the best interests of the public. Refused. J. M. P.

"The Court: 32 has this 'approved' and 'disapproved'. I say this: they had a right to disapprove and oppose by lawful means, and a right to support it by lawful means. This language is misleading. I can remember it very well when you say 'all others', et cetera. I am going to refuse that as it is and I am going to make a note to revise that language. As far as you are concerned it will be refused."

33

I charge you that the defendant District Medical Society and the defendant members thereof had a right to retain and employ competent legal counsel to advise them in matters in connection with which such advice was desired, and particularly in reference to their rights and duties in their Medical Societies, and in rules and regulations relating thereto, and I charge you that the defendants were entitled to rely upon the legal advice so obtained, and, if you find from the evidence that the defendants did rely upon such legal advice, then you are entitled to take that fact into consideration in determining whether or not that which such defendants did in the controversy here presented, as a result of such advice was reasonable or unreasonable. Refused. J. M. P.

"The Court: 33, that is out. There is no question about it."

36

I charge you that in order to convict the defendants, or any of them, in this case, you must find that the acts, if any, committed by such defendants were committed for the direct and primary purpose of restraining Group Health Association, Inc., and were not primarily committed for the purpose of supporting and protecting either the interests

of the defendants themselves, their Societies, their profession, their code of ethics, the public interest, or their method and type of medical practice. Refused. J. M. P.

"The Court: What about 36?

"Mr. Lewin: I think it is bad.

"The Court: I have it marked 'Refused' with a question mark. The underlying thought is not objectionable but the statement is confusing and misleading, especially as to intent and motive. 'If restraint intended or effect natural it is immaterial, whether primary or secondary.'

"Mr. Lewin: That is the point. You have stated my point.

"The Court: I think I will refuse it.

"Mr. Richardson: Will you make a note to give the thought in it?

"The Court: I will."

38

I charge you that the offense of conspiracy may be established by circumstantial evidence, but circumstantial evidence to warrant a conviction in a criminal case must be of such a character as to exclude every reasonable hypothesis but that of guilt of the offense imputed to the defendants, or, in other words, the facts proved must all be consistent with and point to his guilt only, and inconsistent with his innocence. The hypothesis of guilt should flow naturally from the facts proven and be consistent with them all. If the evidence can be reconciled either with the theory of innocence or with guilt, the law requires that the defendant be given the benefit of the doubt, and that the theory of innocence be adopted. Refused. J. M. P.

"The Court: This is also circumstantial evidence. I have a question here about this part in the center beginning with 'in other words, the facts proved must all be consistent with guilt and inconsistent with innocence.' I think that is a little incorrect.

"Mr. Richardson: That is an exact quotation.

"The Court: If they are both reasonable inferences,—that is the point of it. If you have two inferences, either one of which is reasonable, then, of course, you cannot convict, because you have a reasonable hypothesis which necessarily involves a reasonable doubt, but if one is un-

reasonable and the other reasonable, you follow the line of reason. It ought to be qualified in that respect.

I will refuse it as it is but I will make a note to cover that."

40

I charge you that, if you find that it is a reasonable inference from the facts proven that the defendants in committing any acts which you may find they did commit, did so in the belief that they were acting lawfully and within their legal rights to act, and without any intention of committing any unlawful conspiracy or of furthering any unlawful intent or purpose, then I charge you that the evidence would be legally insufficient to warrant the conviction of the defendants in this case. Refused. J. M. P.

"The Court: 40. This ought to be refused. It deals with belief as to the legality of the act."

41

The evidence in this case discloses that Group Health Association, Inc., received the amount of $40,000 from the Home Owners Loan Corporation.

I charge you that, if the defendants believed that such payment was without authority of law and that the receipt of the same by Group Health Association, Inc., was wrongful, that the defendants would be lawfully entitled to act upon such belief in exercising their rights of legitimate persuasion and reasoned argument in opposition to Group Health Association, Inc., its doctors, members and operations, and in enforcing their laws, rules and regulations against members accepting employment with Group Health Association, Inc. Refused. J. M. P.

"The Court: I think this: I think it should be refused because a little misleading the way stated but, of course, if the $40,000 was one reason which led you to argue against it, that is one thing. You can argue it on any reason you want, whether $40,000, or what not, but the last part, 'in enforcing their rules and regulations against G. H. A.',——

"Mr. Kelleher: The point is that persuasion; it should be pointed out.

"The Court: That is my idea about it. I say here as to the next prayer, which deals with the same thing, stated in a different way—I say, 'They have a right to persuade,

et cetera, but that is not the issue; it is whether they conspired to restrain.'

"Mr. Richardson: Yes.

"The Court: You are trying to make a question of whether they argued and persuaded an issue in the case.

"Mr. Leahy: When you say they have a right to argue and persuade it seems like they have not if they cannot do it.

"The Court: I am not telling the jury that. I am going to refuse 41. I think the language is bad. I will make a note."

42

I charge you that, if you find from the evidence that the Comptroller General had held that the $40,000 payment made by Home Owners Loan Corporation to Group Health Association, Inc., was without authority of law and such decision of the Comptroller was known to the defendants, that you would be entitled to take such knowledge into consideration in determining whether the acts committed by the defendants were within the limits of legitimate persuasion and reasoned argument. Refused. J. M. P.

"Mr. Richardson: And the same thing as to 42?

"The Court: It seems to me there seems to be some difference there.

"Mr. Kelleher: There isn't any evidence to show the Comptroller General so held.

"The Court: There is some indirect reference to that.

"Mr. Kelleher: Yes, but the direct evidence on the subject was excluded.

"Mr. Lewin: And the Comptroller General had no jurisdiction whatsoever.

"Mr. Kelleher: The point is this, that you are going to charge them that legitimate persuasion is all right.

"The Court: That word 'legitimate,' I often wonder what the courts mean by that. I think it means argument that has a reasonable foundation, reasonable basis. Wouldn't that be what they mean? Certainly they couldn't go out and slander and libel a person and justify as engaging in legitimate persuasion.

"Mr. Leahy: That is right.

"The Court: We can agree that they could not go out and by slander and libel put a merchant out of business. That

is what I think they mean; some foundation in truth and reason.

"Mr. Richardson: It is not quite clear from what you say whether it is proper to argue the $40,000 item at all.

"The Court: My idea, of course, is this: In view of the fact that they had the right to argue and persuade, it doesn't make any difference that their argument involves the subject of $40,000 or something else.

"Mr. Richardson: No, but in discussing their argument and persuasion can one refer to what they argued and persuaded about?

"Mr. Kelleher: How does that fact that there was a $40,000 involved tend to show all they were doing was persuading and arguing?

"Mr. Richardson: Because from our standpoint it was the most extreme monkeying with Government money; practically embezzlement.

"The Court: The only thing you can say is, 'We did not intend to restrain. We argued against G. H. A., and we took our position against it, and we think it was legitimate argument; fair argument and persuasion, because we had circumstances which gave us a reasonable foundation and basis for that argument.' It seems that is as far as you can go.

"Mr. Richardson: If you cannot state what the basis of your argument and persuasion was, you are not saying anything. Here was this $40,000 transaction. We believed it; we want to argue it.

"The Court: I have here—speaking about 42, 'Yes, they have a right to argue and persuade, but that is not an issue in the case. In other words they are not charged with the purpose to restrain G. H. A. by illegitimate argument and persuasion.'

"Mr. Richardson: Yes, but unless we are able to state the basis on which we did argue we are given the right to persuade and argue and then not permitted to argue about it, because the Government contends you did this for an illegal purpose and we cannot say we did it for a legal purpose.

"The Court: You can say you didn't conspire; you didn't restrain.

"Mr. Richardson: That is a pure conclusion.

"The Court: You can say, 'We didn't do anything but argue and persuade and we did that because there were circumstances justifying that.'

"Mr. Lewin: The reasons which you wish to argue are consistent with boycott:

"Mr. Richardson: All right, if the argument is consistent with boycott then we have a right to make our argument and let the jury decide whether it was argument and persuasion, or not. If you will let us state to the jury what the argument is, then we can get some decision as to what is reasonable persuasion.

"The Court: If you were merely indulging in exercising your right of argument and persuasion, all right; but if you agreed to conspire, all wrong. You are charged with conspiring, not with arguing. Nothing in here charges you with argument and persuasion.

"Mr. Leahy: Of course, as I understand your Honor's ruling, it is if we conspired we are guilty but we have a right to show what we did and why.

"Mr. Lewin: But you cannot go back to that $40,000; that doesn't have a tendency to meet that issue.

"Mr. Richardson: Anything which operating on our minds led us to do something is legitimate in this case because we are charged with having done these things with a purpose in our mind, just exactly as your Honor held with reference to the letter that came here from Worcester, when you said you didn't care whether it was true or not; it furnishes a reason why these people did something.

"The Court: The issue there was this: Was it done arbitrarily, pursuant to the conspiracy, and that tended to show otherwise. It tended to show good faith in the rejection.

"Mr. Richardson: It is a perfect tendency. We are charged with having boycotted these people without any excuse whatsoever. We are charged that our refusal to put G. H. A. on the white list was an act done to further the conspiracy, and is one of the things that will be shaken in our faces. Now, then, if we refuse a demand under Section 5 because we believed this concern was handling Government money illegally, may we not say so?

"The Court: Then I have to reverse my whole position.

"Mr. Lewin: We are going to object to any argument about that. That is the reason it is in here.

"Mr. Richardson: Frankly, we put that in the case here because we think it is error. We want to increase the error.

Your Honor said we still could argue the question of $40,000 as the reason why we acted, as an example of our persuasion and argument.

"Mr. Lewin: It might be boycott; that is why it cannot be argued.

"The Court: I think I will refuse it. We have been all over this."

43

I charge you that, if you find from the evidence that a committee of the House of Representatives reported to Congress that the $40,000 payment made by Home Owners Loan Corporation to Group Health Association, Inc., was without authority of law and such report was known to the defendants and believed by them, the defendants would be justified in relying upon such report in the exercise of legitimate persuasion and reasoned argument in opposition to Group Health Association, Inc., its doctors, members and operations, and in favor of the interests of the defendants, their Societies, rules of ethics, the medical profession and the public interest. Refused, J. M. P.

"Mr. Richardson: Now, you are on 43.

"Mr. Kelleher: 43 is the same kind.

"The Court: Yes, I think that is the same thing, stated in another way.

"Mr. Kelleher: It is the House of Representatives.

"The Court: Oh, sure, refused."

45

I charge you that criticism by the defendants of, or opposition to, Group Health Association, Inc., its doctors, members and operations, is not unlawful and, without more, does not establish a criminal conspiracy under the Sherman Act, even if such opposition and criticism was done collectively by the defendants, because the defendant Societies, if they act at all in criticism or opposition, must act collectively, and such collective action, being lawful, is not in violation of the Sherman Act. Refused. J. M. P.

"The Court: Well, I have this, 'To be qualified.' You see, all this in my charge will go in under the right to criticize, oppose, et cetera, if it is not a part of the conspiracy to restrain, and I have it in my mind that the last part of this is argumentative.

"Mr. Kelleher: I don't know why they must act collectively.

"The Court: I think that prayer—I will refuse the prayer, and make a note to cover it. It is very argumentative."

46

I charge you that objection and criticism made by the defendants, if you so find, directed at Group Health Association, Inc., its doctors, members or operations, no matter how severe or, in the opinion of Group Health Association, Inc., its doctors and members, how unjust, is not unlawful and in itself does not constitute a violation of the Sherman Act, whether done collectively by the defendants in and through their medical Societies, or individually. Refused. J. M. P.

"Mr. Leahy: Then 46, follows 45; probably qualified the same way.

"Mr. Lewin: The same objection to it.

"The Court: I am going to refuse it. I have these grounds stated here:

'Collective criticism may be unlawful but would not violate statute.'

"Mr. Richardson: I don't see why 46 isn't a good statement of the law.

"The Court: No, collective criticism may be an unlawful thing; such as a concerted course of libel as I have spoken of. That would be an unlawful means. Not the purpose, but the means are unlawful.

"Mr. Richardson: Well, the idea is that you severely criticized someone; that the defendants had a right to severely criticize.

"The Court: Sure they did.

"Mr. Richardson: And it didn't make any difference then if they criticized collectively rather than individually.

"The Court: That is your thought, but you have it so phrased, 'is not unlawful.' It may be unlawful, if it involves slander, libel. I will work that in. I have a note here."

49

I charge you that any acts done or committed by the American Medical Association or by its officers prior to January 1, 1937, are only admissible in this case as fur-

nishing a background for a connection by American Medical Association with the alleged conspiracy. Such evidence cannot be used by you for the purpose of establishing the existence of the conspiracy itself as charged in the indictment. Such conspiracy, as here charged, must be established by evidence which convinces you beyond a reasonable doubt, w..olly separate and apart from any acts committed prior to January 1, 1937. Refused. J. M. P.

"The Court: I think his prayer is subject to this criticism. You say such evidence 'cannot be used for the purpose of establishing the existence of the conspiracy itself.' I know exactly what you mean, but that is misleading. It is evidence in the case, that is why it is there. It is evidence tending to show power out of which a conspiracy could be effectuated. It is evidence in the case. Don't you see what I mean?

"Mr. Leahy: Yes.

"The Court: The way you have it stated there, it is not evidence.

"Mr. Richardson: Not evidence for the purpose of proving the conspiracy itself.

"The Court: It is not enough in itself; it is an evidentiary fact.

"Mr. Richardson: I think it only tends to show that the A. M. A. was only getting into the conspiracy because it disliked that sort of practice.

"The Court: I will refuse the prayer; I will revise the language and make a note to qualify it."

50

I charge you that a plan or purpose on the part of the defendants, either individually or collectively, to protect and defend their organizations, their rules and regulations and their principles of medical ethics from an attack thereon or opposition thereto coming from Group Health Association, Inc., its doctors, its members or operations, was not unlawful and would not constitute an unlawful conspiracy in violation of the Sherman Act. Refused. J. M. P.

"Mr. Richardson: I do not think there will be any objection to that.

"Mr. Kelleher: There is no evidence in the case of that.

"The Court: I do not just get it, myself. What I have here is that if the acts did not go to the point of conspiracy to restrain, if they did not intend to restrain, or if the natural consequences were not to restrain, they had a right to do those things.

"Mr. Richardson: It should be considered that neither the White List nor Section 5 nor any of these long meetings in reference to our own members would ever have transpired if they had not come into our house and tried to take away members in violation of our rules.

"Mr. Lewin: That is no attack.

"Mr. Richardson: It is an attack which, if successful, would ruin the Society. If our members can disobey and break our rules we might as well fold up and quit.

"The Court: Suppose your purpose was to do that, but the necessary effect of it was to restrain G. H. A.?

"Mr. Richardson: There would be no restraint under the Sherman Act resulting from protecting ourselves.

"Mr. Lewin: There was no boycott by Group Health against you.

"Mr. Richardson: There was an attempt to take away members in violation of our rules.

"Mr. Kelleher: This is an attempt to try to torture the principle of self defense into this case.

"Mr. Richardson: The Court has several times said that we have a right to do these things to protect ourselves.

"Mr. Lewin: Protect against what?

"Mr. Richardson: The loss of our members and the breaking of the rules.

"Mr. Lewin: You could have kept Lee and Scandiffio on your roster. The rules were illegal. That is an issue in the case.

"Mr. Richardson: No; there is no such issue, and you have never contended to the Court that the rules are illegal, and the Court is not going to charge the jury to that effect.

"The Court: If these things were done for the sole purpose of maintaining and supporting the organization and its rules——

"Mr. Richardson: That is what I mean.

"The Court (continuing:) —that would be lawful.

"Mr. Richardson: It is protective.

"Mr. Lewin: Provided the rules were not bad.

"The Court: I do not understand that any rules adopted were adopted during the conspiracy, were they?

"Mr. Lewin: How about the White List?

"Mr. Richardson: That antedated the conspiracy, too. It was brought out the first of May, on this testimony.

"Mr. Kelleher: July 12.

"Mr. Leahy: Section 5 was adopted in 1935.

"Mr. Lewin: As applied here it was adopted on March 3, 1937.

"The Court: I think I have the right idea about this. I think I will refuse it as it is and work it out. I do not like the language of it. I am refusing it."

51

I charge you that the defendant members of the District of Columbia Medical Society and such Society had a lawful right to adopt the resolution of December 1, 1937, relating to the recommendation by the District Medical Society to have the medical staffs of the hospitals confined to its members and to transmit such resolution to the hospitals as legitimate persuasion and reasoned argument for the purpose of inducing and persuading the hospitals to so agree and act, and the tansmission of such request to such hospitals without more, would not constitute an illegal threat or unlawful coercion, as against such hospitals, and would not be in violation of the Sherman Act. Refused.

"The Court: What do you think about No. 51?

"Mr. Lewin: I think it is undue emphasis again on a false issue.

"Mr. Kelleher: It is calculated to persuade the jury to believe that they could use that sort of persuasion.

"Mr. Leahy: We had a right to do this as legitimate persuasion and argument.

"The Court: I have got this note here: 'Granted,' with a little question mark, and then——

'Yes, if not part of a conspiracy, if not intended to coerce,' and so forth. I think the language is a little off.

"Mr. Lewin: I am sure that the same idea has been undertaken in former prayers.

"The Court: There seems to be a lot of these.

"Mr. Richardson: This refers to the resolution of December 1st, and it is the only one that refers to that resolution.

"The Court: You want to say that all you intended by this was to give to the hospitals reasoned argument, and that you had a right to do it, and that is all?

"Mr. Richardson: Yes.

"Mr. Lewin: But of course if they went down there to persuade those hospitals to keep all Group Health doctors out because they were Group Health doctors——

"The Court: I do not think it means that.

"Mr. Lewin: That was at the same time they were expelling Scandiffio.

"Mr. Kelleher: That is the trouble with it, your Honor.

"Mr. Richardson: They were only expelling Scandiffio because he broke the rules; that was all.

"Mr. Lewin: I think it gives too much emphasis to this. I do not think the Court of Appeals meant it to be done in this case, that is, boycott.

"Mr. Leahy: You call it boycott all the time.

"Mr. Richardson: Every man that shoots another murders him.

"The Court: Suppose the doctors, members of organized medicine, pursuant to their belief that this would work to the betterment of the public interest in giving further assurance of proper doctors on the medical staff, adopted such a regulation as this and then went to the hospitals and said, 'Don't you think that would be wise for the benefit of your hospital and the practice of medicine?'

"Mr. Lewin: It would be an illegal attempt to monopolize.

"Mr. Leahy: Not the slightest.

"The Court: Suppose the jury believes that to be reasonable, in view of the fact that it involved the staffs of hospitals to which the public must go for operations and upon whom they must depend for operations. There undoubtedly is fair reasoning back of it.

"Mr. Richardson: It is uncontradicted in the testimony.

"Mr. Kelleher: There is not anything that shows it is reasonable.

"Mr. Richardson: There is not a man who testified that did not testify that it was a good thing.

"Mr. Leahy: There are lots of doctors who are not on the staffs of hospitals.

"The Court: Is there any reason why doctors might not, by argument and persuasion, attempt to induce the hospitals to adopt that as a reasonable regulation? It comes down

to whether or not, under the conditions, it would be reasonable, of course.

"Mr. Kelleher: Under the Paramount case it does not make any difference how reasonable a regulation is; if it is one that shuts a man out it cannot be done."

"Mr. Leahy: They can shut a man out individually, and they have done it.

"Mr. Lewin: They canont do it by rule or regulation.

"Mr. Kelleher: When you get these doctors working on it you get collective action by the hospitals.

"Mr. Leahy: Oh, no; not at all."

Thereupon the following took place:

"The Court: Maybe we had better come down tomorrow and finish this. I do not believe we are going very far. I am tired.

"Mr. Leahy: Can you not work this out and let us know?

"The Court: Yes; I can do that. But you would not know what I had worked out. I can probably have a little session with you on Wednesday morning and indicate it to you. I think I know your arguments pro and con pretty well now. You might meet me here at 9:30 on Wednesday morning and I can indicate to you. If I can have a whole day to myself I may be able to clarify this thing in my mind so that I can indicate to you very clearly how I am going to handle it. But I am too tired now.

"Mr. Lewin: I think you know our position."

Thereupon the defendants offered the following prayers and instructions:

54

I charge you that the public is concerned with the maintenance of professional standards which will insure not only competency in individual practitioners, but protection against those who would prey upon the public peculiarly susceptible to imposition through alluring promise of physical relief, and the public is concerned in providing safeguards not only against deception but against practices which would demoralize the profession by forcing its members into an unseemly rivalry which would enlarge the operations of the least scrupulous. What is generally called the ethics of the profession is but the consensus of expert

opinion as to the necessity of such standards. Refused. J. M. P.

55

I charge you that the defendant District Medical Society may lawfully provide and keep a list of organizations whose plans of medical service have been approved by the defendant Society and that such list may be kept not only for the use of the members of the defendant District Medical Society but also as notice to others, and the public generally, what organizations and methods of practice have been approved, and the fact that Group Health Associations, Inc., its doctors, members, and operations might be hindered or restrained as a result of such list and the publication thereof would not, of itself, constitute a violation of the Sherman Act. Refused. J. M. P.

56

The defendant members of the District Medical Society had a right to agree among themselves by duly constituted Society action that the Constitution of the Society should contain a provision forbidding members to have professional relationships with organizations (believed by it to be) engaged in the practice of medicine until such particular organization and its operations had first been approved by such Society, and I further charge you that, if, after having adopted such a provision and while the same was in force, any member violating the same might be properly subject to disciplinary proceedings, and to expulsion from the Society, if the Society, after due proceedings, should so determine.

Membership in the Society is conditioned upon obedience to the lawful rules of the Society and disobedient members have no right to insist upon securing the rights and advantages of membership without at the same time remaining in obedience to the lawful rules of such Society. Refused. J. M. P.

57

Each of the Washington hospitals had the right, if it might so choose, to take into consideration in passing upon the qualifications of applicants for membership upon its medical staff, the ethics as well as the professional qualifications of such applicants, and might thereafter grant

or refuse any applicant upon any ground or reason which might, to the particular hospital seem to it desirable, proper or necessary. Refused. J. M. P.

60

Evidence has been permitted in this case with respect to the public need or lack of need of so-called low-cost medicine. I charge you that any need, or lack of need, for a low-cost medicine plan, has nothing to do with the right of the defendants to exercise their lawful powers and duties in connection with the practice of the medical profession. The rights of Group Health Association, Inc. are no greater because of an alleged need for low-cost medicine, than if no such need existed. Group Health Association, Inc. had a lawful right to disapprove of what it may have thought was the attitude of the defendants toward low-cost medicine plans, just as the defendants had an equal right to disapprove of what the defendants thought was the attitude of Group Health Association, Inc. with respect to low-cost medicine plans. Each party to the controversy had the right to further and advance its own opinion in the controversy by all methods of legitimate persuasion and reasoned argument whether applied to members of the medical profession, the Washington hospitals, or the public. Refused. J. M. P.

61

I charge you that if the defendants in good faith believed that the plan and operation of Group Health Association, Inc. was not economically sound and that the result of such economic unsoundness would not be in the public interest, that you would be entitled to consider such belief on the part of the defendants in determining whether the defendants acted reasonably in doing or committing the acts, which, from the evidence, you may find they did commit. Refused. J. M. P.

63

Evidence has been offered concerning acts done in relation to certain Milwaukee hospitals. I charge you that it would be improper for you to find any of the defendants guilty by reason of your conclusion concerning such Milwaukee matter. Such evidence was admitted solely as a

so-called background which might serve to explain other testimony in the case, and such Milwaukee testimony must be only so considered by you. Whether any of the defendants acted wrongfully in the Milwaukee matter is not for you to decide in this case. Refused. J. M. P.

64

I charge you that if the defendant District Medical Society and the defendant members thereof were advised by counsel that Group Health Association, Inc. was a corporation and as such was illegally engaged in the practice of medicine defendant Association could lawfully provide by constitution, by-law, rule or regulation that its members should not render medical services to Group Health Association, Inc. or through Group Health Association, Inc. to its members; and could lawfully expel any member who violated such constitutional provision, by-law, rule or regulation. Such expulsion under such circumstances would not be a violation of the Sherman Anti-Trust Law. Refused. J. M. P.

65

I charge you as a matter of law that if you find from the evidence that a dispute or controversy existed between the defendants as physicians and medical associations of physicians, and Group Health Association, Inc., its physicians, other physicians seeking employment with Group Health Association, Inc., and its members, concerning terms or conditions of employment or concerning the association or representation of defendants in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment pertaining to the practice of medicine and the care and treatment of patients by physicians, including hospitalization, and further find that the defendants and all other parties to the dispute or controversy, including the Washington hospitals, have direct or indirect interests in the same trade or occupation, and further find that the defendants acted in self-interest, and further find that the defendants acted peacefully and without violence, then you must return a verdict of "Not Guilty" as to all defendants. Refused. J. M. P.

66

I charge you that an unlawful combination and conspiracy is the confederation and agreement of two or more persons

for an unlawful purpose or to accomplish a lawful purpose by illegal means. In this case the combination and conspiracy charged in the indictment if illegal must be found to be so because of an illegal purpose as there is no allegation or proof of any means in and of themselves illegal. In order to find an illegal combination and conspiracy you must find from the evidence that the restraints charged and proved beyond a reasonable doubt did or could operate to suppress competition in trade in the District of Columbia. The gist of a charge of conspiracy is agreement. If you find no agreement was entered into and agreed upon by the defendants that did or could operate to suppress competition in trade in the District of Columbia then you must return a verdict of "Not Guilty" as to all defendants. Refused. J. M. P.

"The Court: 59. That is granted.

62. That is granted. I don't like that term "per se" for a jury. I would prefer to speak of it as "of itself."

58. That is granted.

53 is granted, as amended. That is the one we stopped on. There is little amendment there. "The defendants can lawfully combine to support the medical organization." I have just struck out the term "conspire;" that is a bad use of the word; "conspire" does imply criminal acts.

"Mr. Kelleher: I wonder if I could question that.

"The Court: Well, you haven't much time.

"Mr. Kelleher: Isn't it true that they can combine to persuade for any purpose?

"The Court: Let us see. "The defendants • • • by persuasion and reasoned argument and by any other lawful means." That is too broad. The purpose here, of course, would be lawful. I think it is a good prayer. I mean when you read it along with the other prayers, it will work out. Just standing alone I think it is all right. Of course, I have been oppressed by these prayers; there are so many of them.

63. That is refused, the way it is stated. What have you got to say about that?

"Mr. Kelleher: Concerning the Milwaukee situation: that is power, purpose and general plan and scheme.

"The Court: I don't see how you could apply the general plan and scheme done in another place at another time.

"Mr. Kelleher: This Milwaukee thing is contemporaneous.

"The Court: That doesn't make any difference.

"Mr. Kelleher: If they had a general plan to force doctors throughout the United States out of hospitals, through this Mundt Resolution, the enforcement of that here would be material.

"Mr. Richardson: We are dealing with only one defendant in a conspiracy. When you did a certain act it might have had a certain purpose, but it doesn't establish the conspiracy and the purposes. They couldn't possibly find the local defendants guilty on the basis of what was done in Milwaukee.

"The Court: There isn't anything at all to connect the local defendants with that scheme or plan, whatever it may be. They were not interested in the outside activities of the American Medical Association concerning this plan. They were only interested in the local situation.

"Mr. Kelleher: We only offer it against the A. M. A. and Dr. Cutter, to show what he was doing when writing to these hospitals concerning the Mundt Resolution.

"Mr. Richardson: The only point would be when he wrote Milwaukee the Government will say he was using the Mundt Resolution to coerce.

"The Court: I will refuse the prayer. As stated, it is bad.

"Mr. Richardson: Something ought to be stated to show——

"The Court: I know. I may, if I can get time to construct some sort of a charge. You say this applies to the A. M. A. and Cutter only, this "intention, et cetera"?

"Mr. Kelleher: Intention, purpose and plan.

"The Court: Intention and purpose are the same.

"Mr. Kelleher: That is right, intention and scheme.

"The Court: Intention and plan.

66 is refused. 65 is refused. 64 is refused. 61 is refused. 60 is refused. 57 is refused. 56 is refused. 55 is refused. 54 is refused. Doesn't that cover them all?

"Mr. Richardson: I have 52 marked "Hold." It has not been discussed this morning.

"Mr. Kelleher: I would suggest it might be all right. We have no objection to 52.

"The Court: I have already covered that. I understand you are going to undertake the whole argument, Mr. Leahy?

"Mr. Leahy: Yes, I think so.

"The Court: If you want those prayers to go before the jury, I wish you would read them, or have one of your colleagues do so; the ones that are granted. It fits in better with your argument.[10] Secondly, it gives me an opportunity then to present my charge in which will be incorporated in substance the prayers, but not verbatim, thereby shortening my charge and smoothing it out. In it I will say that I granted certain instructions at the request of counsel "that have been read to you and you will consider them as proper statements of the law." That will be a great help to me.

"Mr. Kelleher: I don't know whether that is directed to us also, because we had not intended to read any of the instructions.

"The Court: Well, I don't think it is so appropriate or necessary for you to do so; I have covered the substance of everything.

"Mr. Kelleher: Then there will be no burden on us to do so if we do not wish to?

"The Court: No, I will give the substance.

"Mr. Magee: Is it understood that we have an exception to each prayer overruled?

"The Court: Yes. Of course, there were some prayers of yours which the record shows were amended with your approval. As to these, of course, I assume there is no exception to the refusal of the original prayer."

The objections of the United States as stated hereinbefore were sustained, and defendants' prayers or requests for instructions to the jury numbered 1, 2, 3, 5, 6, 8, 9, 10, 14, 15, 16, 17, 18, 23, 31, 32, 33, 36, 38, 40, 41, 42, 43, 45, 46, 49, 50, 51, 54, 55, 56, 57, 60, 61, 63, 64, 65, and 66 were denied and an exception allowed the defendants.

The Charge to the Jury

The Court: Members of the jury, counsel for the respective parties have submitted to the Court many so-called prayers which are simply written requests to the Court to instruct the jury in particular matters on the law applicable to the case. Those prayers have been considered and quite a list have been granted by the Court as correct statements

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[10] The Court later informed counsel that the instructions granted would be read by the Court in the charge.

of the law. It will be necessary for me to read them to you. First, I will deal with the prayers in behalf of the Government.

The burden of proving the defendants guilty is upon the Government. This does not mean, however, that the Government's proof must establish the defendants' guilt to an absolute certainty. You may find the defendants guilty, if you are convinced beyond a reasonable doubt of all the essential facts necessary to establish the guilt of the defendants.

A reasonable doubt must be real and not imaginary. It must be an honest and substantial misgiving for which a good reason may be given, based upon the nature of the evidence or lack of evidence in the case. If all the evidence in the case, impartially and reasonably considered, produces in your minds a settled conviction or belief of the defendants' guilt—such an abiding conviction as you would be willing to act upon in the most important affairs of your own life—you may be said to be free from any reasonable doubt, and should find a verdict in accordance with that conviction.

In considering the testimony, you should, as to each witness, consider his demeanor and manner of testifying, his interest, if any, in the result of the trial, any temptation to testify falsely, his opportunity to know the facts, the probability or improbability of the testimony given, and all other like circumstances appearing from the evidence; and from all these you should determine the weight and credit to be given to the testimony of the witness. If you believe that any witness has wilfully testified falsely to a material fact, you may disregard all of the testimony of that witness, or give credit to such part thereof as you deem it warrants.

The fact that the defendants may have believed Group Health illegal is not material to the case. A mistake of law will not excuse a violation of the Sherman Act. The fact that the defendants may have had an honest and reasonable belief that Group Health Association was operating illegally would not constitute any justification to violate the law. If you find the defendants were engaged in a combination as charged, it is unnecessary for you to decide whether Group Health Association or its staff may have violated the principles of medical ethics of the American Medical Association, if such were the fact. It is immaterial that Group Health Association may have employed doctors on a contract basis,

or that the members of Group Health Association may not have had complete freedom of choice of physicians from the entire body of doctors practicing in the District of Columbia, or that Group Health Association or its organizers may have solicited Government employees to join Group Health Association. It is likewise immaterial to the issues which you must decide that the defendants may have believed that Group Health Association or the members of its medical staff violated the Principles of Medical Ethics of the American Medical Association.

If you find that the defendants were engaged in a combination as charged, it is unnecessary for you to decide whether the medical care given by the medical staff of Group Health Association was equal to, superior to, or inferior to, the quality of medical care rendered by doctors engaged in private practice. That is immaterial to the issues in the case.

If you find that the defendants were engaged in a combination as alleged, it is unnecessary to decide whether Group Health Association was financially sound. The financial condition of Group Health Association and the sources of its financial support during the period of the conspiracy are immaterial to the issues in this case. It is also immaterial that the defendants may have believed that Group Health Association was financially unsound or that it was subsidized by other organizations.

The Sherman Act prohibits combinations unreasonably in restraint of trade. This prohibition extends to undue restraints upon the furnishing of medical service to the public. If you find that the defendants conspired together for the purposes charged and employed the means charged, and if you find that the defendants, in seeking to achieve those purposes, intended to prevent Group Health Association from competing with doctors engaged in private practice on a fee-for-service basis in furnishing medical care to members of the public eligible for membership in Group Health Association, then the defendants were engaged in a combination in restraint of trade.

If you find a conspiracy to exist, all acts and declarations, oral or written, of each party to the conspiracy, in furtherance of the objects, may be considered as evidence against all of the parties to the conspiracy. This is true even though the party doing such act or making such declaration is not on trial or is not named in the indictment as a defendant.

That is, every person who, knowing of the conspiracy, does any act or makes any statement intended to further the objects thereof, does thereby become a party to the unlawful conspiracy.

It is not necessary that all of the parties to a conspiracy shall actually meet together at one and the same time and place, or that all discuss its purposes or the means of carrying out its objectives, or whether each party knows all the others. Nor do you need to find that all combined together at the start of the conspiracy. If it is shown that the conspiracy was entered into between two or more of the defendants and that at any later time during its existence new or additional parties, while aware of its existence, united with them for the purpose of aiding in the accomplishment of the scheme, they would then become conspirators too and responsible for the consequences thereof.

In determining whether a conspiracy exists it is not necessary to find there was a written or formal agreement among the defendants, or that any participant was bound to another to perform any particular portion thereof. It is sufficient if you find from the evidence that the defendants were voluntarily acting together, however informally, in order to carry out the common objective. Notwithstanding the fact that all of the defendants are charged to have participated in the offense, it is not necessary for the Government to prove that all did so, and you are not required to find all guilty. If you find that the offense charged was in fact committed and that some of the defendants on trial were parties to it, you may convict those whom you so find guilty and acquit the others.

That completes the reading of the instructions on behalf of the Government.

These are instructions granted at the request of the defendants:

The defendants and each of them are presumed to be innocent of the crime charged to them and each of them in the indictment. This presumption surrounds and remains with each throughout the entire trial and should be considered by you in determining the guilt or innocence of each.

Before a verdict of Guilty can be returned against the defendants or any of them the evidence of the Government must not merely indicate guilt, but it must be inconsistent with any rational theory of innocence. Thus, if the jury

finds from the evidence what the defendants did is just as consistent with innocence as with guilt, then the verdict must be Not Guilty as to those defendants.

The defendants had the lawful right to combine and form corporations and associations for the improvement of the practice of their profession and to advance their interests. They had the right to make reasonable rules and regulations respecting their profession and to ascertain the qualifications and character of their members. They had the right to discipline members who failed to abide by the regulations or rules adopted by the associations in the formation thereof and to suspend or expel from membership any member who failed to abide by the rules and regulations. The fact that the defendants adopted such rules and regulations and disciplined members does not of itself constitute an unlawful combination in violation of the statute. They must have combined together with the intent to injure, obstruct or restrain trade, or they must have intended to do acts the necessary effect of which would be to injure, obstruct or restrain trade.

The individual defendants as physicians had a right to determine with what other physicians they would consult, and their refusal to consult with any particular physician is not of itself illegal.

Physicians have the right to select the hospital in which they choose to treat and operate upon their patients; and the refusal of a physician to do business with any hospital because of the composition of its courtesy staff is not of itself illegal.

The defendants American Medical Association and Medical Society of the District of Columbia have the right to adopt rules for just and fair dealing among their members and the right of enforcement of those rules and regulations by such reasonable penalties as they may provide for violation thereof.

The defendants had the right to reach and attempt to reach their objective of advancing the interests of the medical profession by legitimate persuasion and reasoned argument, and to this end they had the right to tell their side of the story and to persuade others, including the Washington hospitals, other physicians, members of Group Health Association, Inc., and the public to utilize and use defendants' method of practicing medicine, and to use peaceful persuasion, publicity, articles in the press, in publications

of defendants, including the Journal of the American Medical Association, and all lawful propaganda to have their methods of practicing medicine prevail over those of Group Health Association.

The defendants had the right to write letters or other statements among themselves or to other members of the profession or to the public generally, expressing disapproval of or opposition to Group Health Association and the form of medical service offered by it.

The defendants were entitled, through legitimate persuasion and reasoned argument, to endeavor to support and advance the interests and extension of that type of medical practice believed by the defendants to be in the public interest, without regard to whether such acts hindered Group Health Association, its doctors, members or operations, or any other type or method of medical practice. If they did not go further to conspire to restrain Group Health Association there would be no offense.

I charge you that the defendants have the lawful right, through action taken in their meetings and conferences, to formulate and adopt rules of medical ethics for the control and government of themselves and the members of their societies in the practice of their profession, and the support and maintenance of such principles of medical ethics by legitimate persuasion and reasoned argument or by enforcement of Society rules, laws and regulations, without more, would not constitute unreasonable restraints against Group Health Association, its doctors or members.

Any doctor who voluntarily joined the defendant Medical Societies was required to comply with the constitution, rules and regulations thereof. No doctor would have the right, as against the wishes of the particular society, to retain membership therein regardless of how valuable or advantageous such membership might be to him, and at the same time wilfully violate any provision of its constitution, rules or regulations.

If a doctor desires to retain membership he is bound to obey the constitution, rules and regulations, since membership therein is entirely voluntary; and if, as a result of his non-observance, he suffers discipline and possible expulsion from the society, any injury, damage or restraint thus suffered by him or by any corporation by which he might have been employed would, without more, not constitute a violation of the statute.

The Washington hospitals are private institutions under private management and control, and the lawful authority to constitute the medical staffs of such hospitals is vested in the governing board thereof. Hospitals have a lawful right to make such reasonable rules and regulations for the operation of the hospitals as to the authorities thereof may seem in their best interests. They are lawfully entitled to require obedience to such rules and regulations by all persons dealing with said hospitals, including doctors permitted by the hospitals to practice their profession therein.

The Washington hospitals had the lawful right, if they so desired, to adopt and enact a rule confining their medical staffs to members of the local medical societies, and any restraint resulting thereby to Group Health Association, its doctors, members, or operations would not in itself be a violation of the Sherman Act.

A member of the medical profession duly authorized by law to practice his profession in the District of Columbia is not by reason thereof entitled to practice in any of the private Washington hospitals. Permission to practice in such a hospital is not a right on the part of an applicant doctor, but is only a privilege which can be extended or withheld from him at the will of, or in the discretion of, the particular hospital.

If the Washington hospitals or any of them believed that it was in the best interests of such hospital to adopt and enforce a rule confining appointments to the medical staff to members in good standing of local Medical Societies, any such hospital had a lawful right to adopt and enforce such rule, and any resulting injury or restraint occasioned thereby to a particular doctor or other person would not be a violation of the statute.

The defendant American Medical Association had the lawful right, upon request of a hospital, to inspect it for the purpose of approving or disapproving it for interne or resident training, and it had a lawful right to approve or disapprove such hospital based on the inspection so made.

The American Medical Association was lawfully entitled to present for the consideration of the hospitals inspected the so-called Mundt Resolution concerning the selection of medical staffs exclusively from the members of local Medical Societies, and such action on the part of the American Medical Association would not of itself constitute an act of coercion as charged in the indictment.

Where the evidence in the case is in whole or in part circumstantial in its nature, the circumstances relied upon by the Government to establish the guilt of the defendants must so distinctly indicate the guilt as to leave no reasonable explanation consistent with innocence.

Facts which give rise to a reasonable and just inference that a conspiracy existed do not necessarily exclude every other reasonable hypothesis unless it can be said that only one just and reasonable inference may be drawn from the given state of facts.

The Medical Society of the District of Columbia is shown by the evidence to have been a component and constituent society and member of the American Medical Association. As such it was entitled to contact, communicate and advise with the officers and representatives of the American Medical Association with reference to matters affecting or relating to the practice of medicine, and such intercourse between the societies is not a violation of the Sherman Act.

If the defendants had objections to Group Health Association and the type of medical practice proposed by it, and believed that the system of medical practice approved by the defendants was better and more in the public interest, then the defendants were lawfully entitled, either individually or collectively, through legitimate persuasion and reasoned argument, either publicly or privately, to urge any and all persons to come to the support of the objectives of the defendants and to disapprove the objectives of Group Health Association, and any resulting restraint, injury, or damage to Group Health Association, its doctors, members or operations is not in violation of the law.

The defendant Wodward had a lawful right to prepare an article or a memorandum disapproving Group Health Association and matters relevant thereto, and to cause the same to be published by the American Medical Association in its Journal, and to do so, without more, would not be a violation of the Act on the part of Woodward or the American Medical Association.

The defendant Fishbein, the editor of the Journal of the American Medical Association, had a lawful right to publish in the Journal objections to Group Health Association and its proposed methods of medical practice; and such publication of articles criticizing Group Health and its plan for medical service, even though it may have restrained or injured Group Health Association, its doctors or mem-

bers, standing alone and without more, would not make Fishbein guilty of a violation of the Act.

The American Medical Association and its officers had the lawful right to receive and answer inquiries concerning various so-called contract medicine plans, and the American Medical Association and its officers, in answering such inquiries, were lawfully entitled to state their own conclusions and beliefs with respect thereto, whether favorable or otherwise, and by so doing, without more, the American Medical Association and its officers would not violate the statute.

Evidence has been admitted tending to show the size and scope of the activities of the American Medical Association. Such fact does not raise any inference of wrongdoing or guilty conduct. Whether the American Medical Association is a large corporation or a small corporation does not affect its lawful right under the law; and the evidence is admitted here only for the purpose of showing the possible power, if any, of such corporation to induce and further the alleged illegal conspiracy set forth in the indictment.

A defendant does not become a party to a criminal conspiracy simply because he is a member of an association which might so conspire, or because he attends meetings of such organization where such conspiracy may be discussed, nor does he become a party to such conspiracy because he has knowledge of its existence or because he may even approve such conspiracy and its unlawful purpose. Before he can be found to be a member of a conspiracy it must appear that he knowingly and intentionally participated therein with the purpose and intention of aiding and furthering it; and you must find, before you can convict such defendant, that such intent existed beyond a reasonable doubt.

It is not unlawful to conspire and combine to effectuate a lawful purpose by lawful means. The defendants could lawfully combine to protect and support their medical organizations, their methods of professional practice, and the principles of medical ethics, by legitimate persuasion and reasoned argument or by any other lawful means.

There is nothing illegal of itself in enacting the so-called Mundt Resolution. The question is whether such resolution was intentionally used in order to aid in the carrying out of an illegal conspiracy on the part of the defendants. Nor

would the fact that the Mundt Resolution was called to the attention of the Washington hospitals, in order to further the wishes of the American Medical Association in carrying out its purpose, be either improper or unlawful, unless you also find, beyond a reasonable doubt, that such acts were intentionally done to aid an illegal conspiracy then and there existing in the District of Columbia.

That, ladies and gentlemen, completes the reading of the instructions which were requested by counsel and granted by the Court.

And now may I, at the risk of some repetition, in my own way briefly outline the case to you and summarize some phases of the law which I deem important to guide you in your consideration?

The Act of Congress under which the indictment is brought makes illegal and punishable every combination or conspiracy in restraint of trade in the District of Columbia. The practice of medicine and the operation of hospitals and organizations to provide for medical care fall within the term trade as used in the Act.

The indictment charges a violation of the statute by the corporations, associations and individuals named in Article I thereof. You will have the indictment. It will inform you with particularity of the names of all the defendants and of the offense with which they are charged.

The case has terminated as to Thomas Allen Groover by reason of his death, and as to Harris County Medical Society, Washington Academy of Surgery, Leon Alphonse Martel and Joseph Rogers Young by the verdicts rendered at my direction.

For brevity, I shall refer to the American Medical Association as the American Association; the Medical Society of the District of Columbia as the District Society; and Group Health Association, Inc. as Group Health.

It is the duty of the Court to state the law of a case to the jury, and the duty of the jury to accept and follow the law as it is given by the Court. This, I am sure, you will do.

The indictment, and the action of the Grand Jury in returning the same, are no evidence of guilt. The defendants are not called upon to prove their innocence. They are presumed to be innocent and that presumption abides with them as a shield against conviction until and unless in your final judgment the evidence establishes guilt beyond a rea-

sonable doubt. Therefore, the burden rests upon the Government to prove guilt according to the charge laid in the indictment.

What is reasonable doubt, as that term is used in the trial of a criminal case? It is a doubt based upon reason; such a doubt as after a full and fair consideration of all the evidence, will leave a juror so undecided as that he cannot conscientiously say he has an abiding conviction of guilt, that is, a settled conviction; which he feels will abide with him in the future, so that if, perchance, his thoughts recur to his action in joining with his fellow jurors in a verdict of guilty, he will, in his own reflections, be justified in mind and conscience that he did the righteous thing.

Although proof beyond a reasonable doubt is necessary, that does not imply proof beyond all doubt and to an absolute certainty. Yet as a fair shield of protection to one accused of crime, the law does insist that before he shall be deprived of his good name and suffer the penalties of a criminal conviction his guilt shall be established by a measure of proof which leaves no reasonable doubt. The evidence must exclude any rational theory of innocence and admit only of an abiding belief in guilt. Hence, if an inference may be fairly drawn, as consistent with innocence as with guilt, a reasonable doubt would necessarily prevail. This is especially so in dealing with evidence of a circumstantial nature. Where such evidence is relied upon to prove essential elements of the charge, it must so clearly point to guilt as to exclude any rational theory of innocence.

Here in the case at bar the charge is that the defendants conspired to restrain trade in certain specified ways. A conspiracy takes form when two or more persons combine to do an unlawful thing, or to accomplish something of a lawful nature by unlawful means. Where such an agreement or understanding, however informal, is reached, all those who join therein become parties to the conspiracy. The object or the means to attain it must be illegal. There can be no criminal combination where both the object and the means are lawful. It is not essential that all details to carry out the plan be specifically arranged, or the particular acts of each be definitely assigned. It is enough if there has been a meeting of minds for concerted action to gain the common end. All need not know each other or meet together at any one time; nor need all combine at the start

of the conspiracy. If two or more have done so, others with knowledge thereof may become participants at future times, while the conspiracy still continues, by uniting in the common design with the purpose to lend their encouragement and support to accomplish the same. Upon thus joining a conspiracy they render themselves liable not only for their own overt acts, but for those of other members to the enterprise. Hence, it is not necessary that all defendants take part in the unlawful acts charged in furtherance of the conspiracy or to know about the same. One may also be liable for an overt act, though actually performed by another, if he knowingly instigates or supports the same by advising, encouraging or abetting it. So, if the alleged conspiracy is found from the evidence to exist, the acts and declarations of each party, shown to be a conspirator, in furtherance thereof, may be considered by the jury in determining the guilt of others who are accused.

However, you will understand that guilt does not attach to one who merely knows of a conspiracy or of acts in furtherance thereof, even though done in his presence. A passive knowledge or attitude is not enough. There must be actual and conscious union with the criminal group. Therefore, membership in the defendant medical societies; presence at their meetings; knowledge of an unlawful plan or purpose among other members, if such there be, would not alone make one a participant. Besides such knowledge there must be the positive intention to give adherence and support to the criminal scheme. Those are brief statements of some rules of law of a general nature to be applied in your consideration of the case.

The indictment itself is very long. That, as you know, is a formal accusation of crime. Much of it is devoted to allegations descriptive of the defendants, as also of the Washington hospitals and Group Health. There are extensive allegations of acts done to effectuate the objects of the alleged conspiracy. All these matters have been frequently referred to during the trial, including the arguments of counsel, and need not be stated again in any detail.

An essential part of the indictment, important to understand, is that which specifically charges a violation of the statute. In substance it is alleged that the defendants conspired:

1. To restrain Group Health in its business of providing medical and hospital care to its members and their dependents on a risk-sharing prepayment basis;

2. To restrain doctors on the staff of Group Health in pursuit of their calling;

3. To restrain other doctors in the District of Columbia in the pursuit of their calling, and

4. To restrain the Washington hospitals in the business of operating such hospitals.

It is further alleged that the plan and purpose of the conspiracy was:

To hinder and obstruct Group Health in procuring and retaining qualified doctors and those doctors from consulting with other doctors and specialists practicing in the District by threatening with disciplinary action members of the District Society who should become members of the staff of Group Health or who should consult with members of that staff. Further, it is alleged the plan and purpose was to hinder and obstruct Group Health in obtaining access to hospital facilities for its members, and the doctors of Group Health from treating their patients in the hospitals.

These purposes, it is alleged, were to be attained by certain coercive measures against the hospitals and doctors designed to interfere with employment of doctors by Group Health and use of the hospitals by members of its medical staff and their patients. The plan is fully detailed in the indictment and has been referred to by Government counsel in their arguments.

To sustain that charge the Government must prove beyond a reasonable doubt that a conspiracy did in fact exist to restrain trade in the District in at least one of the several ways alleged, and according to the particular purpose and plan set forth. If the evidence fails to convince you of that basic element the charge will necessarily fall with resultant acquittal of all defendants. If you find that fact established, then you will consider the evidence in particular relation to each defendant, to determine whether it does prove beyond a reasonable doubt that such defendant was a party to the conspiracy. If you do so find, then that defendant should be convicted, but if a reasonable doubt of guilt prevails you will acquit.

The opposing contentions may be roughly stated as follows:

The Government claims that the evidence proves the medical societies were opposed to Group Health and its plan of group medical care on a fixed prepayment basis; that they feared competition by that method of practice as against the fee-for-service method of organized physicians; that to obstruct and destroy such competition the medical societies, with certain officers and members and the hospitals, conspired to prevent successful operation of Group Health's plan by imposing restraints on physicians affiliated with Group Health, through threats of disciplinary action and expulsion; by denying them professional contacts and consultations with other physicians, and by means of the societies' power, coercing the hospitals to deny Group Health doctors facilities for treatment of their patients. The plan, it is contended, was carried out by enforcing compliance with the so-called Mundt resolution of the American Society, the amendment of March, 1937, to Section 5 of the District Society's constitution, implemented by the "White List" and aided by corporate and individual acts of defendants.

On the other hand, the defendants insist there was no conspiracy; hence, no conspirators; that there was no purpose or plan to restrain Group Health, the hospitals or doctors; that their acts were intended only to oppose Group Health by legitimate argument and persuasion; that no coercion was practiced or intended against the hospitals, and that the "White List" and disciplinary proceedings against members of the District Society represented reasonable action taken by authority of their constitution and rules to protect the organization and its standards of medical practice. Therefore, it is claimed, in behalf of the defendants, that if those actions did interfere with Group Health and its doctors, the effect was but an incidental and indirect result of acts taken legally and in good faith for legitimate ends; and therefore were not wrongful or illegal.

If you believe the contention of the Government is established beyond a reasonable doubt, then the conspiracy is made out; whereas, if the contention of defendants prevails, the charge would altogether fail.

In the light of these contentions and the arguments supporting them, you will review the evidence fully and

impartially to determine whether it does prove beyond a reasonable doubt the charge laid in the indictment.

Was there a conspiracy to restrain trade in one or more of the ways alleged? If so,

Who of the present defendants were parties to the conspiracy? All; or some; or none? To decide that question you will need to examine the evidence independently as it relates to each defendant. As to the corporate defendants, they would be responsible if authorized officers, acting for or in the name of the corporation, did acts within the apparent scope of the corporate powers, in forming or furthering the alleged conspiracy.

Did there exist the criminal intent? That is, was there a purpose and plan as charged? That would be so if in fact the positive intent to restrain prevailed, or there was a purpose to do acts the natural and probable effect of which would be to impose any of the restraints alleged. Another and different purpose would not suffice, even if wrongful, for the Government must prove the charge as laid—not some other offense.

If it be true, as defendants claim, that the District Society, acting only to protect its organization, regulate fair dealing among its members, and maintain and advance the standards of medical practice, adopted reasonable rules and measures to those ends, not calculated to restrain Group Health, there would be no guilt, though the indirect effect may have been to cause some restraint against Group Health. It would be justified if but an incidental result of reasonable regulation of the membership and affairs of the organization, for the statute comprehends only such restraints as do directly and unreasonably affect freedom of competition in the trades and professions.

In joining the District Society members assumed the duty of compliance with laws and regulations thereof. The right to practice medicine gave a doctor no right to be a member of the Society. Discipline and control of members of a society, within reasonable bounds, are essential. When applied in good faith, under fair rules, without ulterior purpose to injure the business of a member or others, there is no wrong. However, such rules and regulatory actions cannot be justified where the real purpose, or the natural results, are to interfere with free competition.

The defendant physicians had the individual right to determine with what other physicians they would consult,

and refusal to do so with particular physicians is not of itself illegal. Although, if, as alleged, it was done in furtherance of a conspiracy against Group Health and its doctors, it would be illegal. So too, a doctor may refuse to treat patients in a particular hospital for any reason at all, but if a group of doctors, pursuant to a concerted scheme, refused so to do to injure the business of the hospital, their acts would be illegal; for in the eyes of the law there is danger to the public interests where many combine and act together to interfere with the free play of competitive forces in business and professions.

There was no duty on the societies, their officers or members, to approve Group Health or its plan of medical care. They could not rightfully oppose in a manner intended to restrain its operations. But they did have the right of legitimate criticism, argument and persuasion, however persistent and severe; either separately or by collective effort; through the medium of speech, letters or print. If their opposition was thus confined, and did not take the form of a conspiracy to restrain, or was not done in pursuance of such a scheme, there was no violation of the statute.

So too, the "White List" of the District Society and the Mundt Resolution of the American Society were not wrongful in themselves. Their apparent purposes were justifiable, and if those were in fact the real objects, the defendants had the right to combine and act together to promote the same in good faith; but if they were perverted to advance the aims of a conspiracy, any steps thus taken would bring the actors within the criminal scheme.

The hospitals had the lawful right to prescribe rules and regulations governing the use of their facilities by doctors and patients. In their boards was vested the authority to decide what physicians would be allowed the privileges. A doctor had no right to demand them. To grant or refuse the same rested solely with the hospital. Therefore, if denial of privileges to Dr. Selders, or other members of the Group Health staff, represented the voluntary decision of the boards, no question would arise as to the legality of their acts. However, if refusal was arbitrary and to serve a criminal conspiracy against Group Health or their doctors, it would violate the statute.

Much evidence relates to the so-called background of the alleged conspiracy. It is intended to show power of the

medical societies over doctors and hospitals and opposition to certain forms of medical practice. No inference of guilt can be drawn from such evidence alone; nor from any power or opposition it may reveal, because those acts were before the alleged conspiracy. Therefore, that evidence can only be considered as it may shed light upon the intent and effect of later acts within the period of the alleged conspiracy.

Numerous letters, writings and oral statements of defendants and other persons have been proven. In many instances the authors have testified to the meaning they intended. However, arguments of counsel reveal frequent conflict as to the true meaning. It will be for you to interpret the writings and declarations fairly, in the light of all the evidence. If, when so considered, any are deemed equally susceptible of two meanings, one indicative of guilt, the other of innocence, then I think it only fair that you favor the innocent interpretation, just as you would in dealing with circumstantial evidence or the ultimate questions on which a verdict depends where there appear two reasonable theories or hypotheses one equally as reasonable as the other.

The respective merits of differing methods of medical care are not an issue in this case. Advocates and adherents of each are entitled to their views and may follow their choice. They had the right to support the same by fair competition and to oppose by way of discussion, argument and persuasion. But neither group would be justified in conspiring to restrain the activities of the other.

The legality of Group Health, or its methods of providing medical care, or the quality thereof, or its financial condition, or the grant of money by others to it are not issues in the case.

The defendants, however, had the lawful right to discuss and to argue these matters in opposition to Group Health Association and its methods of medical care, and to do so would constitute no violation of the statute.

In judging of the evidence you must necessarily evaluate the testimony of individual witnesses. Only thus can you determine the truth, and it is the truth you must seek. Bring to that task your knowledge of human nature; your ability to judge of men; their sources of knowledge; their intelligence; their motives; their intentions, so you may

discern the real character behind the spoken words and measure their weight of truth and accuracy.

Interest in those things involved within the controversy or its results; friendship or animosity towards persons concerned therein, and many other human factors, may or may not affect the desire and capacity of a witness to tell the truth, depending largely upon his innate character. Give to the testimony of each witness only that weight to which in your good judgment it is entitled when tested by the foregoing considerations and the light of other evidence in the case. Interpret writings and declarations fairly according to reason and probabilities, as the circumstances surrounding their making may reflect a true meaning.

In your deliberations give thought to the views of your fellow-jurors. By full and free discussion, apply your best reason and judgment. Without sympathy or prejudice, calmly and dispassionately endeavor to reach a common understanding as to the truth, and return a verdict accordingly.

And now, ladies and gentlemen, as you retire to consider of your verdict, and throughout the course of your deliberations, be ever mindful of the solemn obligation imposed by your oath as jurors to render a true verdict according to the evidence; so help you God!

Is there anything further?

Mr. Lewin: The Government has nothing further, your Honor.

Mr. Leahy: May we approach the bench?

The Court: Yes.

Mr. Richardson: If your Honor please, the defendants now object to sending with the jury in their deliberations a copy of the indictment in this case, for the reason that the same contains irrelevant, incompetent, and prejudicial matter in its allegations.

Objection overruled and exception to defendants.

The defense excepts to the charge with reference to disbelieving the testimony of a witness, because the charge does not permit the corroboration of such testimony by other credible testimony in the case.

Exception is further noted to the charge of the Court with respect to eliminating the belief of the defendants, the character of medical service, the financial soundness of the method of practice of Group Health Association, and the

subsidization of such corporation by persons not members.

The defendants further object to the definition stated in the charge as to what facts would establish a violation of law.

The defendants further except to the statement in respect to violation of the Sherman Act by restraints which are not defined as unreasonable.

Mr. Magee: We want exceptions in the record and objections to the correctness of all the prayers granted to the Government which were read by the Court, as incorrect, misleading, and improper statements of the law pertaining to the facts in this case. We contend that the charge concerning what constitutes a conspiracy and how new conspirators can enter that conspiracy is misleading and prejudicial, as the charge as to conspiracy seems to ignore the fundamental principle that the gist of conspiracy is an unlawful agreement which must, under all the circumstances, be found to exist as a fact, particularly where a specific intent is charged.

We contend, further, that the charge over-emphasizes the allegations of the indictment without proper charges in the proper place. These allegations are no evidence against the defendants. We contend that it is error to charge that the defendants can be convicted on any single restraint or purpose charged in the indictment, as the indictment charges a large conspiracy to accomplish given purposes, and it cannot be proven by a number of smaller conspiracies.

We particularly object to the charge that they can be found guilty of a violation of the Sherman Act because of restraints on members of G. H. A. Further, we contend that the reference to the Society's approved list, constantly in the charge, as a White List instead of as an approved list, is prejudicial.

We contend that under the allegations of this indictment it was error to charge that the defendants could be found guilty because purpose might be inferred from natural and probable results and not be shown to be a specific intent, which is the gist of the charge.

We contend that it is error to include the activities of the profession, Group Health Association doctors, and the hospitals as within the scope of the Sherman Act.

We contend it was error to charge that natural results can interfere with competition.

We contend that the defendants can combine, and that it was error for the Court to charge that they cannot combine to injure G. H. A., as the evidence discloses a labor dispute clearly within the meaning of the Norris-LaGuardia Act and the Clayton Act and renders all of the restraints charged legal; so it was error to charge that neither group could restrain the other.

Mr. Burke: The defendants except because the reasonable doubt charge tendered by the Government and given by the Court was error, particularly the description of what is a reasonable doubt.

The defendants except to that part of the charge which tells the jury that the practice of medicine is a trade, that the operation of the hospitals involved in this case was a trade, that the business of G. H. A. was a trade, and that the activities of the members of G. H. A. were a trade, all within the meaning of the Sherman Act.

Mr. Magee: We except, further, to the failure of the Court to include within the charge the instructions submitted by the defendants and heretofore refused.

Objections overruled and exception noted.

The Court: Ladies and gentlemen, you may retire.

(Whereupon, at 11:10 o'clock a. m., the jury were furnished a copy of the indictment and retired to consider their verdict.)

VERDICT OF THE JURY

(Thereupon, at 11:30 p. m., the jury returned to the courtroom, whereupon the following proceedings were had:)

The Court: I want to say this to those present: whatever the verdict may be I want it to be accepted in silence; no demonstration of any kind whatever. Please observe that.

By the Assistant Clerk:

Q. Mr. Foreman, have you agreed upon a verdict?

The Foreman: We have.

Q. Has the jury agreed upon a verdict?

The Foreman: Yes.

Q. What say you as to the defendant American Medical Association?

A. Guilty.

Q. What say you as to the District Medical Society?

A. Guilty.

Q. What say you as to the defendant Arthur Carlisle Christie?

A. Not guilty.

Q. What say you as to the defendant Coursen Baxter Conklin?

A. Not guilty.

Q. What say you as to the defendant James Bayard Gregg Custis?

A. Not guilty.

Q. What say you as to the defendant William Dick Cutter?

A. Not guilty.

Q. What say you as to the defendant Morris Fishbein?

A. Not guilty.

Q. What say you as to the defendant Robert Arthur Hooe?

A. Not guilty.

Q. What say you as to the defendant Rosco Genung Leland?

A. Not guilty.

Q. What say you as to the defendant Thomas Ernest Mattingly?

A. Not guilty.

Q. What say you as to the defendant Francis Xavier McGovern?

A. Not guilty.

Q. What say you as to the defendant Thomas Edwin Neill?

A. Not guilty.

Q. What say you as to the defendant Edward Hiram Reede?

A. Not guilty.

Q. What say you as to the defendant William Mercer Sprigg?

A. Not guilty.

Q. What say you as to the defendant William Joseph Stanton?

A. Not guilty.

Q. What say you as to the defendant John Ogle Warfield, Jr.?

A. Not guilty.

Q. What say you as to the defendant Olin West?

A. Not guilty.

Q. What say you as to the defendant Prentiss Willson?

A. Not guilty.

Q. What say you as to the defendant William Creighton Woodward?

A. Not guilty.

Q. What say you as to the defendant Wallace Mason Yater?

A. Not guilty.

Q. The jury says that the defendant American Medical Association is guilty; the District Medical Society is guilty; the defendants Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard Gregg Custis, William Dick Cutter, Morris Fishbein, Robert Arthur Hooe, Rosco Genung Leland, Thomas Ernest Mattingly, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, Prentiss Willson, William Creighton Woodward, Wallace Mason Yater, are not guilty?

A. Yes.

Q. And so say you each and all?

(Jurors individually answered in the affirmative.)

Q. And that is your verdict?

(Jurors individually answered in the affirmative.)

Exception noted by the defendants to the verdict.

MOTION TO SET ASIDE VERDICT AND FOR JUDGMENT FOR DEFENDANTS

Come now defendants, American Medical Association, Incorporated, and The Medical Society of the District of Columbia, Incorporated, by their attorneys, and severally and individually and without waiving any other Motion herein filed or to be filed, move the Court to set aside the verdict herein as to each defendant, and to enter judgment of not guilty as to each defendant notwithstanding the verdict herein, on the following grounds:

(1) The law holds a corporation can only act through its officers, agents and employees. In the present case as a matter of fact the evidence shows that the two corporations

could only have acted by their officers, agents and employees all of whom have been acquitted. As the theory upon which a corporation can be held criminally responsible is the theory that the illegal acts and criminal intentions of its employees can be imputed to the corporation, it follows that in the present case there is no factual foundation for inferring that the corporations are guilty.

(2) The indictment having charged that the acts were committed by the individual defendants, not as individuals but as agents of the two corporate defendants, and the individuals having been acquitted it follows that the corporations cannot be held.

(3) The indictment does not charge nor does the proof show that the activities of the defendants, or either of them, violated any law of the United States. There is nothing to show that they concern trade or commerce in the District of Columbia within the meaning of Section 3 of the Sherman Act.

(4) The indictment shows that the activities of Group Health Association, its doctors and members, constitute the illegal practice of medicine by a corporation, and therefore such activities could not be the subject of a conspiracy in restraint of trade under Section 3 of the Anti-Trust Law.

(5) The activities alleged and proved against the defendants, or either of them, were within their lawful rights.

(6) The jury having held the individual defendants are not guilty, there is no evidence left in the case with which to hold the corporate defendants.

(7) And for such other grounds as are apparent on the face of the record and the evidence herein and as may be argued at the hearing hereof.

Filed with supporting points and authorities on April 7, 1941.

Motion in Arrest of Judgment

Come now the defendants, American Medical Association and the Medical Society of the District of Columbia, by their attorneys, and, without waiving any other motion

filed or to be filed, move the Court to arrest the judgment herein and hold for naught the verdict of "guilty" rendered against these defendants, and for grounds therefor, state:

(1) The activities charged to the defendants or shown by the evidence do not violate any law of the United States.

(2) The activities charged to the defendants or shown by the evidence do not concern trade or commerce in and of the District of Columbia under Section 3 of the Sherman Act.

(3) The business, operations and activities of Group Health Association, Inc., its doctors and members, and others dealing with the corporation, are part and parcel of the illegal practice of medicine and the illegal operation of insurance business and could not be the subject of unlawful restraints under Section 3 of the Sherman Act.

(4) The activities charged to the defendants or shown by the evidence are all within the lawful rights of the defendants.

(5) Because of the nature of the offense charged and the acquittal of all individual defendants, particularly the officers and members of defendant corporations, being the only persons charged or claimed to have acted illegally for and on behalf of the defendant corporations, the verdict is a legal anomaly, and is unsupported by the evidence, and amounts, in law, to a verdict of "Not Guilty" against said defendant corporations.

(6) The verdict is contrary to law and the evidence.

(7) And for other grounds apparent on the face of the record or in the evidence.

Filed with supporting points and authorities on April 7, 1941.

Motion for New Trial

Come now the defendants, American Medical Association and the Medical Society of the District of Columbia, by their attorneys, and, without waiving any other motion filed or to be filed, move the Court to set aside the verdict in the above-entitled cause and to grant these defendants a new trial and for the grounds therefor state:

(1) The evidence in the record was insufficient to find the individual defendants guilty, and it is, therefore, not sufficient to find these defendants, or either of them, guilty. There is no evidence in the record to support the verdict except the evidence applicable to the activities of the individual defendants, and the record discloses that whatever was done by these corporate defendants was done, if at all, solely through the individual defendants who have been found not guilty.

(2) The Court erred in refusing to admit evidence and testimony offered by the defendants.

(3) The Court erred in holding that evidence offered by the defendants relating to the so-called $40,000 payment of Home Owners Loan Corporation to Group Health Association, Inc., was irrelevant and could not be discussed to the jury in argument despite similar testimony theretofore received in evidence which remained before the jury.

(4) The Court erred in holding that testimony concerning and relating to Medical Dental Service Bureau, operated and carried on by the local defendants, was irrelevant.

(5) The Court erred in refusing to admit evidence tendered by the defendants pertaining to the solicitation of members and patients by Group Health Association, Inc., Home Owners Loan Corporation, and other persons acting on behalf of Group Health Association, Inc.

(6) The Court erred in rejecting evidence offered by the defendants tendered to show advertising on behalf of Group Health Association, Inc., pertaining to the medical services of members of Group Health Association, Inc.

(7) The Court erred in refusing to admit testimony tendered by the defendants tending to show subsidies paid in money, services, or other things of value, to Group Health Association, Inc., by The Twentieth Century Fund, Inc., Good Will Fund, Inc., Health Economics Association, Inc., Home Owners Loan Corporation, credit unions, and others.

(8) The Court erred in restricting the evidence offered by the defendants pertaining to the quality, nature and character of the medical services proposed and furnished by the Group Health Association, Inc.

(9) The Court erred in refusing evidence tendered by the defendants of the contract and the amended contract be-

tween Home Owners Loan Corporation and Group Health Association, Inc., wherein Group Health Association, Inc., as a corporation, promised to render medical services to Home Owners Loan Corporation for a consideration.

(10) The Court erred in refusing to receive testimony and evidence under offers of proof by the defendants pertaining to the illegality of the operations and activities of Group Health Association, Inc., its doctors and members, and other persons doing business with the Association.

(11) The Court erred in refusing to receive testimony and evidence under offers of proof by the defendants pertaining to the belief of the defendants in the illegality of the operations and activities of Group Health Association, Inc., its doctors and members, and other persons doing business with the Association.

(12) The Court erred in refusing testimony offered by the defendants tending to prove that one of the reasons for the disapproval or non-approval of Group Health Association, Inc., under the constitution of the defendant Medical Society of the District of Columbia, was an understanding and belief on the part of the Defendants that the said Group Health Association, Inc., was engaged in the illegal practice of medicine and the illegal operation of an insurance business in the District of Columbia and was the recipient of public moneys unlawfully paid to the said Group Health Association by the Home Owners Loan Corporation, together with the receipt by Group Health Association, Inc., of various subsidies from the various persons and agencies hereinbefore mentioned.

(13) The Court erred in refusing to admit evidence tendered by the defendants showing their reasons for their argument and persuasion pertaining to Group Health Association, Inc.

(14) The Court erred in refusing to admit evidence offered by the defendants pertaining to a justification on their part for any of the claimed restraints pertaining to the practice of medicine, the furnishing of medical services, the activities and operations of Group Health Association, Inc., its doctors and members, or other doctors, and the business of the Washington hospitals.

(15) The Court erred in rejecting evidence contained in the offers of proof of the defendants.

(16) The Court erred in admitting evidence offered by the United States.

(17) The Court erred in admitting in evidence the statements, oral and written, the letters and the remarks of the individual defendants heretofore found not guilty under the verdict.

(18) The Court erred in receiving evidence concerning the so-called "background" of the conspiracy charged in the indictment and in overruling the motion of the defendants to strike this evidence from the record.

(19) The Court erred, because of the prejudicial statements contained therein, in permitting the jury to take the indictment with the said jury into the jury room for examination and consideration by the said jury.

(20) The Court erred in admitting evidence of or pertaining to the Washington hospitals and the activities thereof in relation to Group Health Association, Inc., its doctors and members, and in overruling the motion of the defendants to strike such evidence from the record.

(21) The Court erred in denying the motions of these defendants and each of them for a directed verdict at the close of the Government's case.

(22) The Court erred in denying the motions of these defendants and each of them for a directed verdict at the close of all the evidence.

(23) The Court erred in charging the jury, among others, in the following respects:

(a) In charging that the practice of medicine, the furnishing of medical services, the activities and operations of the Group Health Association, Inc., its doctors and members, and the business of the Washington hospitals were trade of the District of Columbia and each within the purview and scope of Section 3 of the Sherman Act.

(b) In charging the jury of the nature and character of the offense alleged and the type and character of evidence sufficient for a conviction.

(c) In defining "reasonable doubt."

(d) In charging the defendants could be found guilty of the offense charged in the indictment by proof of any

single purpose or intent as set forth as a part of the general conspiracy alleged, and particularly that intended restraint of members of Group Health Association, Inc., was sufficient basis for a conviction.

(e) In charging that the beliefs of the defendants concerning the illegality and unethical and improper character of the operations of Group Health Association, Inc., and its economic unsoundness and financial setup, including subsidies, were irrelevant.

(f) In charging the operations of Group Health Association, Inc., were legal and irrelevant.

(g) In charging that it was unnecessary for a conviction for the United States to prove the specific intent charged in the indictment.

(h) In charging that aiding and abetting made a defendant a conspirator.

(i) In charging the defendant corporations had no legal right to restrain Group Health Association, Inc., or do the other activities described in the indictment.

(j) In granting and giving the charges or instructions requested by the United States.

(k) In modifying and, as so modified, giving instructions tendered by the United States.

(l) In refusing and failing to give certain charges or instructions requested by the defendants.

(m) In modifying and, as so modified, giving instructions tendered by the defendants.

(n) In failing to properly charge that restraints to be illegal under Section 3 of the Sherman Act must be direct, material, and unreasonable.

(24) The charge of the Court was prejudicial, among others, in the following respects:

(a) It overemphasized to the prejudice of the defendants, the allegations of the indictment without proper protective instructions.

(b) It was highly misleading.

(c) It characterized the approved list of the defendant Medical Society of the District of Columbia as a "white list."

(24) The verdict is contrary to law.

(25) The verdict is contrary to the evidence.

(26) The verdict is contrary to the weight of the evidence.

(27) The verdict is a legal anomaly and is repugnant to the law and evidence.

(28) And for other reasons apparent on the face of the record or in the evidence.

Filed with supporting points and authorities on April 7, 1941.

By stipulation of the parties and order of Court dated April 10, 1941, the defendants' Motion to Set Aside the Verdict and For Judgment, Motion in Arrest and Motion For New Trial were set for argument, and submission under advisement on May 2, 1941. On May 2, 1941 said Motions were argued, submitted and taken under advisement by the Court. On May 29, 1941, the following proceedings occurred:

The above-entitled cause came on for hearing on motions filed by American Medical Association and The Medical Society of the District of Columbia, defendants, for:

(1) Judgment Non Obstante Veredicto

(2) In arrest of Judgment

(3) For a New Trial

before Associate Justice James M. Proctor, in Criminal Division No. 2, at 12:30 p. m. o'clock, Thursday, May 29, 1941.

Proceedings

The said motions (1) For Judgment Non Obstante Veredicto; (2) In Arrest of Judgment, and (3) For a New Trial having heretofore been argued, and decision thereupon having been by the Court taken under advisement, it is ordered that said motions, and each of them, be and the same are denied. Exception noted.

It is further ordered, and it is the judgment of this Court, that defendant, American Medical Association, a Corporation, do pay a fine of Twenty-Five Hundred ($2500) Dollars; and that defendant, The Medical Society of the District of Columbia, a corporation, do pay a fine of Fifteen Hundred ($1500) Dollars.

And the Clerk is directed to enter said judgments accordingly.

Dated this 29th day of May, 1941.

Exception noted by the defendants and allowed by the Court.

Memorandum

All pending motions in various forms looking to the granting of a new trial are severally denied. The Clerk will enter the proper orders.

James M. Proctor, Justice.

Dated May 19, 1941.
Copies mailed to all Attorneys.
Following in handwriting:

"Above includes:

Motion in Arrest of Judgment.
Motion Non Obstante Veredicto.
Motion for New Trial.

J. M. P."

"Filed May 29, 1941.

Charles E. Stewart, Clerk."

Judgment

On this 29th day of May, A. D. 1941, came the United States Attorney, and the defendant by its attorneys, Messrs. Edward M. Burke, William E. Leahy, Seth Richardson, Charles S. Baker and Warren Magee; and the defendant having been convicted on a verdict of guilty of the offense charged in the indictment in the above-entitled cause, to-wit: Combination and Conspiracy in Vio. of Section 3 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act, and the defendant having been now asked whether it has anything to say why judgment should not be pronounced against it, and no sufficient cause to the contrary being shown or appearing to the Court, It Is By The Court.

Ordered And Adjudged that the defendant, American Medical Association, a corporation, pay a fine of Twenty-Five Hundred ($2500) Dollars.

James M. Proctor, Justice. (Seal.)

Exception noted by the defendants and allowed by the Court.

Judgment

On this 29th day of May, A. D. 1941, came the United States Attorney, and the defendant by its attorneys, Messrs. Edward M. Burke, William E. Leahy, Seth Richardson, Charles S. Baker and Warren Magee; and the defendant having been convicted on a verdict of guilty of the offense charged in the indictment in the above-entitled cause, to-wit: Combination and Conspiracy in Vio. of Section 3 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act, and the defendant having been now asked whether it has anything to say why judgment should not be pronounced against it, and no sufficient cause to the contrary being shown or appearing to the Court, It Is By The Court.

Ordered And Adjudged that the defendant, The Medical Society of the District of Columbia, a Corporation, pay a fine of Fifteen Hundred ($1500) Dollars.

James M. Proctor, Justice. (Seal.)

Exception noted by the defendants and allowed by the Court.

Order Extending Time Within Which to File Bill of Exceptions

On motion of defendants, American Medical Association and The Medical Society of the District of Columbia, it is ordered:

That American Medical Association, a corporation, and the Medical Society of the District of Columbia, a corporation, defendants, have until and including November 1, 1941, to settle and file herein a bill of exceptions.

Enter.

James M. Proctor, Judge.

"Filed June 3, 1941. Charles E. Stewart, Clerk."

Order Staying Execution Pending Appeal or Review and Making the Notices of Appeal When Filed Respectively a Supersedeas Without Bond

On motion of American Medical Association and Medical Society of the District of Columbia, it is ordered:

That pending proceedings on appeal or any other form of review in the Court of Appeals of the District of Columbia by said defendants and pending proceedings on certiorari or any other form of review in the Supreme Court of the United States by the said defendants, execution on the judgment and the collection of the fines and costs herein are hereby stayed without bond and the notices of appeal of said defendants when filed herein shall respectively operate as a supersedeas without bond.

Enter:

James M. Proctor, Judge.

No objection by Government. James M. Proctor. Filed May 29, 1941.

The exhibits of the United States received in evidence at the trial, but which were not read to the jury (unless printed in the body of the bill of exceptions) are compiled and printed in a separate volume and are incorporated herein.

Certificate

The foregoing is all of the testimony, evidence and proceedings, or the substance of all of the testimony, evidence and proceedings, had and heard on the trial of this case from the beginning thereof through the final judgments therein, and all of the exceptions reserved on behalf of the defendants.

And thereupon, and as all the said exceptions were duly noted and allowed as aforesaid and duly entered upon the minutes of the Court, and because the testimony, evidence, proceedings and exceptions hereinbefore recited do not fully appear of record, in order to make the same a part of the record herein, which is hereby ordered so that the defendants may have their case reviewed, the defendants by their attorneys move the Court to approve, settle, sign and seal this, the bill of exceptions, so that the same may henceforth be preserved and made of record, and to have the same force and effect as if each and every one of said exceptions

had been separately signed and sealed, which motion is granted by the Court; and thereupon the defendants tender this, their bill of exceptions, and request the Court to approve, settle, sign and seal the same, which is accordingly done, now for them, this 31st day of October, 1941.

By the Court:

JAMES M. PROCTOR. [SEAL.]
Justice.

Approved:

JOHN HENRY LEWIN,

GRANT W. KELLEHER,

E. COMPTON TIMBERLAKE,
Attorneys for the United States, Plaintiff.

EDWARD M. BURKE,

WM. E. LEAHY,

SETH W. RICHARDSON,

CHAS. S. BAKER,

WARREN E. MAGEE,
Attorneys for the Defendants.

* * * * * * *

Minute Entry Re Bills of Exceptions

Now comes here the defendants, American Medical Association, a corporation, and the Medical Society of the District of Columbia, a corporation, by their attorneys, Edward M. Burke, Seth W. Richardson, William E. Leahy, Charles S. Baker and Warren E. Magee, Esquires, and thereupon the Bill of Exceptions of each of the said defendants herein is submitted, settled, signed, sealed, made of record and filed this 31st day of October, 1941.

* * * * * * *

DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Charles E. Stewart, Clerk of the District Court of the United States for the District of Columbia, hereby certify the foregoing pages numbered from 1 to 1528, both inclusive, to be a true and correct transcript of the record, according to directions of the Court and counsel herein filed, copy of which is made part of this transcript, in cause entitled United States vs. American Medical Association, et al., Criminal No. 63221, as the same remains upon the files of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 31st day of October, 1941.

[SEAL] CHARLES E. STEWART,
Clerk.

* * * * * * *

(Bill of Exceptions.) Filed October 31, 1941. Charles E. Stewart, Clerk.

CLERK'S COPY.

VOL. III

TRANSCRIPT OF RECORD

163

537028

Supreme Court of the United States

OCTOBER TERM, 1942

No. 201

AMERICAN MEDICAL ASSOCIATION, A CORPORATION, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 202

THE MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA, A CORPORATION, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED JULY 3, 1942.

CERTIORARI GRANTED OCTOBER 12, 1942.

United States Court of Appeals for the District of Columbia

No. 7929

AMERICAN MEDICAL ASSOCIATION, A CORPORATION, APPELLANT,

vs.

UNITED STATES OF AMERICA, APPELLEE

No. 7930

MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA, A CORPORATION,

vs.

UNITED STATES OF AMERICA, APPELLEE

BOOK OF EXHIBITS

of the United States which were received in evidence but not read to the jury.

PRESS OF JUDD & DETWEILER, INC., WASHINGTON, D. C.

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United States Court of Appeals for the District of Columbia

No. 7929

AMERICAN MEDICAL ASSOCIATION, A Corporation, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee

No. 7930

MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA, A Corporation,

vs.

UNITED STATES OF AMERICA, Appellee

BOOK OF EXHIBITS

of the United States which were received in evidence but not read to the jury.[1]

Gov. Ex. 1

Stipulation

It is hereby stipulated and agreed by and between counsel for the defendants and counsel for the United States that:

1. The American Medical Association is, and has been since April 14, 1897, incorporated under the laws of Illinois as a corporation. The Act concerning corporations approved April 18, 1872, and all acts amendatory thereof, under which said corporation is incorporated are filed herewith. Filed herewith are true copies of the charter, constitution, by-laws, and principles of medical ethics of said Association in effect on December 20, 1938. Except for

[1] There may be some exhibits inadvertently herein set forth which were read to the jury and which appear in the body of the bill of exceptions. In addition certain exhibits are herein set forth which were described to the jury in the language appearing in the body of the bill of exceptions, but which were not read to the jury.

the changes made in said constitution, by-laws, and principles of medical ethics as indicated in the copies thereof filed herewith, said charter, constitution, by-laws, and principles of medical ethics were in effect throughout the period from February 24, 1937, to December 20, 1938. The office of the American Medical Association is located at Chicago, Illinois. On April 1, 1938, the American Medical Association had 109,435 members out of a total of 169,628 doctors in the United States.

2. The Medical Society of the District of Columbia is, and has been for many years last past, a corporation incorporated under one or more Acts of Congress. Filed herewith are true copies of the Acts of Congress relating to the incorporation of The Medical Society of the District of Columbia. Filed herewith are true copies of the constitution and by-laws of said Society in effect on December 20, 1938. Except for the changes made in said constitution and by-laws as indicated in the copies thereof filed herewith, said constitution and by-laws were in effect throughout the period from February 24, 1937, to December 20, 1938. Said Society has its office in the District of Columbia. On April 1, 1938, The Medical Society of the District of Columbia had 825 members out of a total of 1,979 doctors in the District of Columbia.

3. The Harris County Medical Society is, and has been for several years last past, an unincorporated association of physicians and surgeons and has its office in Houston, Harris County, Texas.

4. The Washington Academy of Surgery is, and has been for several years last past, an unincorporated association of surgeons in the District of Columbia. The officers of the Washington Academy of Surgery during the period February 24, 1937, to April 23, 1937, were Dr. Charles S. White, President; Dr. J. P. Shearer, Vice President; and Dr. W. Warren Sager, Secretary and Treasurer. The officers of the Washington Academy of Surgery during the period April 23, 1937, to April 8, 1938, were Dr. John A. Cahill, President; Dr. Daniel Borden, Vice President; and Dr. F. C. Fishback, Secretary and Treasurer. The officers of the Washington Academy of Surgery during the period April 8, 1938, to December 20, 1938, were Dr. Daniel Borden, President; Dr. Fred Sanderson, Vice President; and Dr.

J. Ogle Warfield, Jr., Secretary and Treasurer. The members of the Advisory Committee on Hospital Privileges of the Washington Academy of Surgery during the period April 23, 1937, to April 8, 1938, were Dr. John H. Lyons, Chairman; Dr. Daniel Borden; Dr. Fred Sanderson; and Dr. A. L. Riddick. It is the best recollection of Dr. Crenshaw D. Briggs, Secretary of the Washington Academy of Surgery, and said Dr. Crenshaw D. Briggs would so testify if called, that the members of the Advisory Committee on Hospital Privileges during the period April 8, 1938, to December 20, 1938, were Dr. Fred Sanderson, Chairman; Dr. Alec Horwitz; Dr. F. X. McGovern; Dr. Paul Putzski; Dr. A. L. Riddick; and Dr. J. P. Shearer. Proof of additional members on said committee may be offered by either party and received in evidence.

5. Each of the following corporations and associations was engaged in operating a hospital throughout the period from February 24, 1937 to December 20, 1938: Central Dispensary and Emergency Hospital; Children's Hospital of the District of Columbia; Columbia Hospital for Women; Eastern Dispensary and Casualty Hospital; Episcopal Eye, Ear and Throat Hospital; Garfield Memorial Hospital; National Homeopathic Hospital of the District of Columbia; Providence Hospital; Sibley Memorial Hospital; and Washington Sanitarium and Hospital. These hospitals are located in Washington, D. C., except that the Washington Sanitarium and Hospital is located in Takoma Park, Maryland. All of said hospitals claim to be incorporated not for profit.

6. Membership in the American Medical Association is ordinarily obtainable only through affiliated state or territorial medical associations. State or territorial medical associations are known as "constituent" societies of the American Medical Association. Membership in most constituent associations or societies is ordinarily obtainable only through membership in affiliated county or local medical societies, which are known as "component" societies of those constituent associations and of the American Medical Association. The Medical Society of the District of Columbia has no component medical society of the American Medical Association. Members of affiliated component or constituent medical societies are, ipso facto, members of the American Medical Association.

7. Membership in the American Medical Association was held by all individual defendants throughout the period from February 24, 1937, to December 20, 1938. Throughout said period Dr. Morris Fishbein was Editor of the Journal of the American Medical Association; Dr. Olin West was Secretary and General Manager of the American Medical Association; Dr. William Creighton Woodward was Director of the Bureau of Legal Medicine and Legislation of the American Medical Association; Dr. William Dick Cutter was Secretary of the Council on Medical Education and Hospitals of the American Medical Association; Dr. Rosco Genung Leland was Director of the Bureau of Medical Economics of the American Medical Association. Said individuals during said period were full-time employees of the American Medical Association.

8. Each of the individual defendants, except the defendants Dr. Morris Fishbein, Dr. Olin West, Dr. William Dick Cutter, and Dr. Roscoe Genung Leland, was a member of The Medical Society of the District of Columbia throughout the period from February 24, 1937, to December 20, 1938. Dr. William C. Woodward was an honorary member of The Medical Society of the District of Columbia throughout said period.

9. Between February 24, 1937, and July 1, 1937, the following named persons were all members of the Executive Committee of The Medical Society of the District of Columbia: Dr. William Mercer Sprigg, Dr. Henry C. Macatee, Dr. J. Lawn Thompson, Dr. R. Arthur Hooe, Dr. C. N. Chipman, Dr. Daniel L. Borden, Dr. Earl R. Templeton, Dr. William P. Herbst, Jr., Dr. A. J. B. Connolly, Dr. David Davis, Dr. Herbert Schoenfeld, Dr. Charles B. Campbell, Dr. Wallace M. Yater, Dr. Coursen B. Conklin, Dr. Joseph L. Horgan, Dr. Oscar B. Hunter, Dr. Thomas E. Neill, Dr. A. B. Bennett, Dr. William T. Gill, Jr., Dr. Augustus C. Gray, Dr. Sterling Ruffin, Dr. Francis X. McGovern, and Dr. Raymond T. Holden, Jr.

10. Between July 1, 1937, and July 1, 1938, the following named persons were all of the members of the Executive Committee of The Medical Society of the District of Columbia: Dr. A. B. Bennett, Dr. William T. Gill, Jr., Dr. Augustus C. Gray, Dr. Raymond T. Holden, Jr., Dr. Francis X. McGovern, Dr. Sterling C. Ruffin, Dr. Daniel L. Bor-

den, Dr. Henry R. Schreiber, Dr. William Mercer Sprigg, Dr. Thomas E. Neill, Dr. Henry C. Macatee, Dr. Edward Hiram Reede, Dr. R. Arthur Hooe, Dr. C. N. Chipman, Dr. John A. Reed, Dr. S. A. Alexander, Dr. John F. Preston, Dr. Harry A. Fowler, Dr. R. Lomax Wells, Dr. Earle G. Breeding, Dr. John P. H. Murphy, Dr. Harry Lee Claude, Dr. Wallace M. Yater, and Dr. Coursen B. Conklin.

11. Between July 1, 1938, and December 20, 1938, the following named persons were all of the members of the Executive Committee of The Medical Society of the District of Columbia: Dr. Francis X. McGovern, Dr. Thomas E. Neill, Dr. Don R. Johnson, Dr. Raymond T. Holden, Jr., Dr. William J. Mallory, Dr. John Hugh Lyons, Dr. Henry C. Macatee. Mr. Theodore Wiprud was secretary of said Executive Committee during said period. The by-laws and constitution of The Medical Society of the District of Columbia define the duties of the Executive Committee.

12. Between February 24, 1937, and July 1, 1937, the following named persons were all of the officers of The Medical Society of the District of Columbia: Dr. William Mercer Sprigg, President; Dr. William P. Herbst, Jr., First Vice President; Dr. Morris I. Bierman, Second Vice President; Dr. Coursen B. Conklin, Secretary-Treasurer.

13. Between July 1, 1937, and July 1, 1938, the following named persons were all of the officers of The Medical Society of the District of Columbia: Dr. Thomas E. Neill, President; Dr. Daniel B. Moffett, First Vice President; Dr. Jacob Kotz, Second Vice President; Dr. Coursen B. Conklin, Secretary-Treasurer.

14. Between July 1, 1938, and December 20, 1938, the following named persons were the officers of The Medical Society of the District of Columbia: Dr. William J. Mallory, President; Dr. John Hugh Lyons, First Vice President; Dr. William T. Gill, Jr., First Vice President; Dr. David Davis, Second Vice President. Dr. Coursen B. Conklin was Secretary-Treasurer from July 1, 1938, to November 2, 1938. Mr. Theodore Wiprud was Secretary-Treasurer from November 2, 1938, to December 20, 1938.

15. Between February 24, 1937, and July 1, 1938, The Medical Society of the District of Columbia had a committee known as the "Hospital Committee."

16. Between February 24, 1937, and July 1, 1937, the following named persons were all of the members of said Hospital Committee: Dr. E. W. Titus, Dr. Francis X. McGovern, Dr. Ralph LeComte, Dr. John A. Reed, Dr. George R. Huffman, Dr. Fred R. Sanderson, Dr. Paul S. Putzki, Dr. Gregg C. Birdsall, Dr. Frank Leach, Dr. William H. Jenkins, and Dr. J. G. Lewis.

17. Between July 1, 1937, and July 1, 1938, the following named persons were members of said Hospital Committee: Dr. J. Ogle Warfield, Jr., Chairman, Dr. Leon A. Martel, Dr. William H. Jenkins, Dr. Gregg Custis Birdsall, Dr. J. G. Lewis, Dr. William B. Marbury, Dr. Jerome F. Crowley, Dr. Edward P. McLarney, Dr. Joseph P. Shearer, Dr. Warren Sager, and Dr. John H. Trinder. Proof of additional members on said committee during said period may be offered by either party and received in evidence.

18. Between July 1, 1938, and December 20, 1938, there was no Hospital Committee.

19. The following defendants were members of the regular and attending staffs of the Washington hospitals indicated after each name:

Dr. Coursen Baxter Conklin, Children's Hospital of the District of Columbia; Eastern Dispensary and Casualty Hospital; George Washington University Hospital.

Dr. James Bayard Gregg Custis, National Homeopathic Hospital of the District of Columbia.

Dr. Robert Arthur Hooe, Central Dispensary and Emergency Hospital.

Dr. Thomas Ernest Mattingly, Sibley Memorial Hospital.

Dr. Leon Alphonse Martel, Georgetown University Hospital.

Dr. Francis Xavier McGovern, Garfield Memorial Hospital.

Dr. Thomas Edwin Neill, Episcopal Eye, Ear and Throat Hospital and Garfield Memorial Hospital.

Dr. William Mercer Sprigg, Columbia Hospital for Women.

Dr. John Ogle Warfield, Jr., Children's Hospital of the District of Columbia and Garfield Memorial Hospital.

Dr. Prentiss Willson, Columbia Hospital for Women.

Dr. Wallace Mason Yater, Georgetown University Hospital.

Dr. Joseph Rogers Young, Eastern Dispensary and Casualty Hospital.

20. Group Health Association, Inc., is, and has been since February 24, 1937, a corporation incorporated under the laws of Congress for the District of Columbia. Filed herewith is a true copy of the original certificate of incorporation of said corporation and amendments thereto. Filed herewith is a true copy of the original by-laws of said corporation as adopted on March 22, 1937, the amendments thereto during the period from March 22, 1937 and the amendments thereto during the period from March 22, 1937, to December 20, 1938.

The foregoing contents of this stipulation and the stipulation itself are not to be considered as evidence offered on behalf of any of the parties hereto, unless and until the same, or any part thereof, is offered in evidence by any party hereto and then only as evidence on behalf of the party offering same. Upon the offer by any party of any part or all of this stipulation in evidence, said stipulation, or any part thereof, will be subject to the objection by any other party hereto that the facts hereby stipulated, or any of said facts, are incompetent, irrelevant, and immaterial on the issues formed in this case. No objection will be made that the stipulation is not competent evidence upon the facts stated in the stipulation, but objection may be made that the facts stated in the stipulation are not competent on the issues. By this stipulation the parties hereto do not intend to stipulate that they, or any of them, had knowledge of the facts herein stated at the time they occurred.

It is further understood and agreed that the specifications of times herein do not preclude proof by any party of the facts covered by this stipulation at times other than those specified herein, nor preclude proof by any party that said facts were represented or believed to be otherwise.

Edward M. Burke, Seth W. Richardson, Wm. E. Leahy, Chas. S. Baker, John E. Laskey, Counsel for the Defendants. (S.) John Henry Lewin, Grant W. Kelleher, Special Assistants to the Attorney General.

(The foregoing stipulation was read to the jury).

CONSTITUTION AND BY-LAWS OF THE MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA

(As Adopted in 1911 and Amended; Revised and Readopted on May 23, 1934)

[SEAL]

Washington, D. C., 1934

An Act to Incorpate the Medical Society of the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, that Charles Worthington, James H. Blake, John T. Shaaff, Thomas Sim, Frederick May, Joel T. Gustine, Elisha Harrison, Peregrine Warfield, Alexander McWilliams, George Clark, Henry Huntt, Thomas Henderson, John Harrison, Benjamin S. Bohrer, Samuel Horseley, Nicholas W. Worthington, William Jones, James T. Johnson, Richard Weightman, George May, Robert French, and such persons as they may from time to time elect, and their successors, are hereby declared to be a community, corporation, and body politic, forever, by and under the name and title of the Medical Society of the District of Columbia; and by and under the same name and title they shall be able and capable in law to purchase, take, have and enjoy, to them and their successors, in fee or for lease, estate or estates, any land, tenements, rents, annuities, chattels, bank stock, registered debts, or other public securities within the District, by the gift, bargain, sale, demise, or of any person or persons, bodies politic or corporate, capable to make the same, and the same; at their pleasure, to alien, sell, transfer or lease and apply to such purposes as they may adjudge most conducive to the promoting and disseminating medical and surgical knowledge, and for no other purpose whatever: *Provided, nevertheless,* That the said society, or body politic, shall not, at any one time, hold or possess property, real, personal or mixt, exceeding in total value the sum of six thousand dollars per annum.

Sec. 2. *And be it further enacted,* That the members of the said society, above designated, shall hold, in the City of Washington, four stated meetings in every year, viz: on the first Mondays in January, April, July and October; the officers of the society to consist of a President, two Vice-Presidents, one Corresponding Secretary, one Recording Secretary, one Treasurer and one Librarian, who shall be appointed on the second Monday in March, one thousand eight hundred and nineteen, and on the annual meeting in January forever thereafter, (not less than seven members being present at such meeting), and the society may make a common seal, and may elect into their body such medical and chirurgical practitioners, within the District of Columbia, as they may deem qualified to become members of the society; it being understood that the officers of the society now elected are to remain in office until the next election after the passage of this act.

Sec. 3. *And be it further enacted,* That it shall and may be lawful for the said Medical Society, or any number of them attending, (not less than seven), to elect by ballot five persons, residents of the District, who shall be styled the Medical Board of Examiners of the District of Columbia, whose duty it shall be to grant licenses to such medical and chirurgical gentlemen as they may, upon a full examination, judge adequate to commence the practice of the medical and chirurgical arts, or as may produce diplomas from some respectable college or society; each person so obtaining a certificate to pay a sum not exceeding ten dollars, to be fixed on or ascertained by the society.

Sec. 4. *And be it further enacted*, That any three of the examiners shall constitute a board for examining such candidates as may apply, and shall subscribe their names to each certificate by them granted, which certificate shall also be countersigned by the President of the society, and have the seal of the society affixed thereto by the Secretary, upon paying into the hands of the Treasurer the sum of money to be ascertained, as above, by the society; and any one of the said examiners may grant a license to practice, until a board, in conformity to this act, can be held; *Provided*, That nothing herein contained shall authorize the said corporation in any wise to regulate the price of medical or chirurgical attendance, on such persons as may need those services.

Sec. 5. *And be it further enacted*, That after the appointment of the aforesaid medical board, no person, not heretofore a practitioner of medicine or surgery within the District of Columbia, shall be allowed to practice within the said District, in either of said branches, and receive payment for his services, without first having obtained a license, testified as by this law directed, or without the production of a diploma, under the penalty of fifty dollars for each offense, to be recovered in the county court where he may reside, by bill of presentment and indictment; one-half for the use of the society, and the other for that of the informer.

Sec. 6. *And be it further enacted*, That every person who, upon application, shall be elected a member of the Medical Society, shall pay a sum not exceeding ten dollars, to be ascertained by the society.

Sec. 7. *And be it further enacted*, That the Medical Society be, and they are hereby empowered, from time to time, to make such by-laws, rules and regulations, as they may find requisite, to break or alter their common seal, to fix the times and places for the meetings of the board of examiners, filling up vacancies in the medical board, and to do and perform such other things as may be requisite for carrying this act into execution, and which may not be repugnant to the constitution and laws of the United States: *Provided*, That nothing herein contained shall extend to prohibit any person during his actual residence in any of the United States, and who, by the laws of the state wherein he doth or may reside, is not prohibited from practicing in either of the above branches, from practicing in this District; *Provided always*, That it shall and may be lawful for any person, resident as aforesaid, and not prohibited as aforesaid, when specially sent for, to come into any part of this District, and administer or prescribe medicine, or perform any operation for the relief of such to whose assistance he may be sent for.

Sec. 8. *And be it further enacted*, That Congress may, at any time, alter amend, or annul this act of incorporation of said society at pleasure.

H. CLAY,
Speaker of the House of Representatives.
DANIEL D. TOMPKINS,
Vice-President of the United States and President of the Senate.
JAMES MONROE.

Approved February 16, 1819.

ACT OF INCORPORATION

An Act to Revive, with Amendments, An Act to Incorporate the Medical Society of the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Frederick May, M. D., Alexander McWilliams, M. D., Henry Huntt, M. D., N. P. Causin, M. D., W. Jones,

M. D., Richmond Johnson, M. D., Thomas Sewall, M. D., George W. May, M. D., Nicholas W. Worthington, M. D., Joshua Reily, M. D., James S. Gunnell, M. D., Harvey Lindsly, M. D., James C. Hall, M. D., Thomas Miller, M. D., Joseph Borrows, M. D., Alexander McD. Davis, M. D., Benjamin King, M. D., Noble Young, M. D., H. F. Condict, M. D., W. B. Magruder, M. D., Peregrine Warfield, M. D., J. B. Blake, M. D., and such other persons as they may from time to time elect, and their successors, are hereby declared to be a community, corporation, and body politic, forever, or until Congress shall by law direct this charter to cease and determine, by and under the name and title of the Medical Society of the District of Columbia; and by and under the same name and title they shall be able and capable in law to purchase, take, have and enjoy, to them and their successors, in fee or for lease, estate or estates, any land, tenements, rents, annuities, chattels, bank stock, registered debts, or other public securities within the District, by the gift, bargain, sale, demise, or of any person or persons, bodies politic or corporate, capable to make the same, and the same, at their pleasure, to alien, sell, transfer, or lease and apply, to such purposes as they may adjudge most conducive to the promoting and disseminating medical and surgical knowledge, and for no other purpose whatever: *Provided, nevertheless,* That the said society or body politic shall not, at any one time, hold or possess property, real, personal or mixed, exceeding in total value the sum of six thousand dollars per annum.

Sec. 2. *And be it further enacted,* That the members of the said society above designated shall hold, in the City of Washington, two stated meetings in every year, viz: on the first Monday in January and July; the officers of the society to consist of a President, two Vice-Presidents, one Corresponding Secretary, one Recording Secretary, one Treasurer, and one Librarian, who shall be appointed on the first Monday in July, one thousand eight hundred and thirty-eight, and on the annual meeting in January forever thereafter, and who shall hold their offices for one year, and until others are chosen in their stead (not less than seven members being present at such meeting); and the society may make a common seal, and may elect into their body such medical and chirurgical practitioners, within the District of Columbia, as they may deem qualified to become members of the society, it being understood that the officers of the society now elected are to remain in office until the next election after the passage of this act.

Sec. 3. *And be it further enacted,* That it shall and may be lawful for the said Medical Society, or any number of them attending, (not less than seven), to elect by ballot five persons, residents of the District of Columbia, whose duty it shall be to grant licenses to such medical and chirurgical gentlemen as they may, upon a full examination, judge qualified to practice the medical and chirurgical arts, or as may produce a diploma from some respectable medical college or society, each person so obtaining a certificate to pay a sum, not exceeding ten dollars, to be fixed on or ascertained by the society.

Sec. 4. *And be it further enacted,* That any three of the examiners shall constitute a board for examining such candidates as may apply, and shall subscribe their names to each certificate by them granted, which certificate shall also be countersigned by the President of the society, and have the seal of the society affixed thereto by the Secretary, upon paying into the hands of the Treasurer the sum of money to be ascertained as above by the society; and any one of the said examiners may grant a license to practice until a board in conformity to this act can be held: *Provided,* That nothing herein contained shall authorize the said corporation in anywise to regulate the practice of medical or chirurgical attendance on such persons as may need those services nor to establish or fix a tariff of charges or fees for medical attendance or advice, or to interfere in any way with charges or fees for medical attendance or advice.

Sec. 5. *And be it further enacted*, That after the appointment of the aforesaid medical board no person, not heretofore a practitioner of medicine or surgery within the District of Columbia, shall be allowed to practice within the said District, in either of said branches, without first having obtained a license, testified as by this law directed, or the production of a diploma from a respectable medical college, or a board of examiners established by law: *Provided*, That the professors in such college, or the examiners in such board, be men regularly instructed in medicine and surgery, and the collateral branches of medical education, anatomy, chemistry, under the penalty of fifty dollars for each offense, to be recovered in the county court where he may reside, by bill of presentment and indictment, one-half for the use of the society, and the other for that of the informer.

Sec. 6. *And be it further enacted*, That every person who upon application shall be elected a member of the Medical Society, shall pay a sum not exceeding ten dollars, to be ascertained by the society.

Sec. 7. *And be it further enacted*, That the Medical Society be, and they are hereby, empowered, from time to time, to make such by-laws, rules, and regulations as they may find requisite; which by-laws, rules, and regulations shall, in their application and operation, be exclusively confined to said society, as a society, or body corporate, and not to its members individually, when not acting in a corporate character; to break or alter their common seal; to fix the times and places for the meetings of the boards of examiners; filling up vacancies in the medical board; and to do and perform such other things as may be requisite for carrying this act into execution, and which may not be repugnant to the Constitution and laws of the United States: *Provided always*, That it shall and may be lawful for any person, resident as aforesaid, and not prohibited as aforesaid, when specially sent for, to come into any part of this District and administer or prescribe medicine, or perform any operation for the relief of such to whose assistance he may be sent for: *And provided also*, That nothing in this act contained shall be so construed as to prevent any person, living within or without said District, from administering medicine, or performing any surgical operation, with the consent of the person or the attendants of the person to whom such medicine is administered, or upon whom such surgical operation is performed, without fee or reward; nor to prevent the giving advice or assistance in any way to the sick or afflicted, upon charity and kindness; nor to prevent the receipt of reward for the same, if voluntarily tendered or made; nor to extend to midwifery by females; and any person so administering medicine or performing any surgical operation, not authorized to practice physic and surgery agreeably to the provisions of this act, shall be prohibited from collecting any fee or reward for the same by any process of law: *And be it further provided*, That no person shall be admitted to an examination until he shall produce satisfactory evidence that he has studied physic and surgery three years, including one full course of medical lectures, as usually taught at medical schools, or four years without such a course of lectures.

Sec. 8. *And be it further enacted*, That Congress may at any time alter, amend, or annul this act of incorporation of said society at pleasure.

JAMES K. POLK,
Speaker of the House of Representatives.
RD. M. JOHNSON,
Vice-President of the United States and President of the Senate.
M. VAN BUREN.

Approved July 7, 1838.

[Public—No. 138—68th Congress]

[H. R. 4122]

An Act To amend an Act entitled "An Act to revive, with amendments, an Act to incorporate the Medical Society of the District of Columbia," approved July 7, 1838, as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act to revive, with amendments, an Act to incorporate the Medical Society of the District of Columbia," approved July 7, 1838 (Sixth Statutes at Large, page 741), as amended, be, a. the same hereby is, amended so as to read as follows:

"That Doctors George Wythe Cook, William Gerry Morgan, John B. Nichols, John D. Thomas, E. Y. Davidson, Philip S. Roy, A. L. Stavely, Henry C. Macatee, E. G. Seibert, J. Russell Verbrycke, junior, A. W. Boswell, Charles S. White, J. A. Gannon, D. S. Lamb, and Virgil B. Jackson, and such other persons as they may associate with themselves, and their successors, be, and they hereby are, constituted a body corporate not for profit, of the District of Columbia, for the purpose of promoting and disseminating medical and surgical knowledge, and for no other purpose; and not for the purpose of establishing a medical school or schools.

"Sec. 2. That the Medical Society of the District of Columbia be, and it is hereby, empowered to own, mortgage, and convey such property as may be necessary for its purposes, and to make such rules and regulations as it may require, and which may not be repugnant to the constitution or laws of the United States.

"Sec. 3. That Congress may at any time alter, amend, or annul this Act of incorporation of said society."

FRED H. GILLETT,
Speaker of the House of Representatives.
ALBERT B. CUMMINS,
President pro tempore of the Senate.

Approved May 24, 1924.
CALVIN COOLIDGE.

CONSTITUTION AND BY-LAWS OF THE MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA

(As adopted in 1911 and amended; revised and readopted on May 23, 1934)

Constitution

Chapter I.—Name, Object and Status

Article I. The name of this organization shall be The Medical Society of the District of Columbia.

Article II. The object of this Society shall be the promotion, locally and generally, of the science and art of medicine and sanitation and the interests of the medical profession.

Article III, Section 1. This Society, chartered by Act of Congress of May 24, 1924, shall be a continuation and amalgamation of the Medical Society of the District of Columbia (founded September 26, 1817, and chartered by acts of Congress of February 16, 1819, and July 7, 1838) and the Medical Association of the District of Columbia (organized January 11, 1833).

Sec. 2. All funds, records, papers and property belonging to the Medical Society of the District of Columbia and the Medical Association of the District of Columbia at the time of their amalgamation shall become the property of this Society. All the records, minutes and important papers of these organizations shall be carefully and perpetually preserved.

Sec. 3. This Society shall be a representative medical organization of the District of Columbia, constituted and maintained in conformity with the general plan of the American Medical Association; it hereby declares its allegiance to the American Medical Association and agrees with other state and territorial medical associations to the formation and the perpetuation of the House of Delegates of the American Medical Association.

Chapter II.—Membership

Article I. The members of this Society shall be of four classes: active, life, associate and honorary.

Article II. Every active, life, associate and honorary member of either the Medical Society of the District of Columbia or the Medical Association of the District of Columbia, or of both, in good standing at the time this Constitution goes into effect, shall *ipso facto* become a member (active, life, associate, or honorary, as the case may be) of this Society; and the order of seniority of such members shall be reckoned from the date of their first admission into either of those bodies. Seniority since the amalgamation shall be dated from the date of last admission.

Article III, Section 1. Active membership shall (with such exceptions as may occur in consequence of the operation of the foregoing section) be limited to reputable, legally qualified practitioners of medicine who are solely or mainly engaged in the lawful practice of medicine in the District of Columbia, and who are not active members of any other component association of the American Medical Association.

Sec. 2. Applications for active membership must be made in writing on forms provided by the Society, indorsed by three active members of the Society, and sent to the Secretary-Treasurer, who shall present them at the next stated meeting of the Society and publish the list to the membership. They shall then be referred to the Committee of Censors, which shall investigate and submit a report thereon at the next ensuing stated meeting; when they shall be voted on by the Society. No application for membership that is rejected or withdrawn shall be renewed until after two years from the time of its rejection or withdrawal. Due notice of the names of all candidates to be voted on for membership at each stated meeting shall be sent to all active members. The voting shall be by individual secret ballot (in no case by empowering any officer or member to cast a unanimous ballot), and a favorable concurrence of two-thirds of the votes cast shall effect election to membership. After election each applicant shall, within three months, sign an obligation to be governed by the Constitution and By-laws of this Society and pay the dues for the current calendar year.

Sec. 3. Active members who are non-residents of and have ceased to practice medicine in the District of Columbia may, upon written request, become associate members by a two-thirds vote of the Society at any meeting.

Article IV. Life members shall be active members who have been active members for a total of forty years. They shall have all of the privileges of active membership and shall be exempt from paying dues and assessments.

Article V. Associate members shall be medical men not eligible for active membership or scientists engaged in collateral lines of research. They

shall be elected in the same manner as active members; they shall have the privilege of attending and participating in the scientific sessions of the Society, and shall receive its publications and notices of its meetings; they shall not vote or hold office in the Society, shall be subject to its discipline, and pay such dues and assessments as may be imposed by the Society. Associate members, upon becoming eligible for active membership, shall make formal application for active membership. On failure to do so within three months, they shall cease to be associate members.

Article VI. Honorary members. Any physician, scientist, or other person who deserves recognition, by reason of eminent contributions to medical or collateral science or of meritorious services to the medical profession, may be proposed for honorary membership by the Executive Committee in writing at any stated meeting. The proposal shall be considered by the Committee of Censors and reported on at the next stated meeting, and shall then be voted on by the Society in the same manner as applications for active membership. Favorable concurrence of two-thirds of the votes cast shall effect admission of the candidate as an honorary member. Honorary members shall have the privilege of attending the meetings and participating in the scientific proceedings of the Society, but shall not hold office nor vote, nor pay dues or assessments; notices of meetings need not be sent to them unless they are resident in the District of Columbia or so desire.

Article VII. Resignations shall be submitted in writing and, after being read at any regular meeting, shall be voted on at the next regular meeting, and, with the concurrence of a majority, be accepted; except that no resignation shall be accepted from a member who is indebted to the Society for dues or assessments.

Chapter III.—Meetings

Article I, Section 1. This Society shall hold regular meetings every Wednesday during the months from October to May, inclusive, excepting the last two Wednesdays in December and May, and Wednesdays falling upon a National holiday or the day before; at eight o'clock, P. M., unless the Society by a two-thirds vote shall cancel a meeting.

Sec. 2. The first meeting in the months of January, March, May and November shall constitute the stated meetings, and shall be devoted to the transaction of the formal business of the Society. The stated meeting in May of each year shall constitute the annual meeting of the Society and shall be devoted to the reception of annual reports and other annual business, including election of officers as hereinafter provided.

Sec. 3. The first meeting of each month, other than the stated meetings, shall be devoted primarily and mainly to the transaction of the current business of the Society. All other meetings shall be devoted entirely to scientific proceedings, namely, the presentation of cases, specimens, and papers on medical subjects, and only announcements may be made and emergency business transacted. The conduct of the scientific programs of such meetings may be assigned equitably to the various sections. Social sessions may be held at any meeting.

Sec. 4. Special meetings shall be held as may be ordered by the Society or the Executive Committee, or upon the written request of any ten members.

Article II. Consideration of motions or resolutions involving an expression of the opinion of the Society in public matters shall be in order only provided due notice of the subject and time of its consideration shall have been sent to all active members.

Article III. Due notice of each regular and special meeting shall be sent to each active member, in which shall be specified, so far as possible, the program contemplated for the meeting, both as to scientific material and items of important business.

Article IV. Any business due to be transacted at any stated, regular, or special meeting of the Society may, if circumstances necessitate, by vote of the Society (or, in case of emergency, of the Executive Committee), be postponed to a specified subsequent meeting. Due notice of such postponement shall be sent to every member, and such postponed action shall be as valid as if effected at the original meeting.

Article V. This Society shall be governed and conducted exclusively by its active and life members.

Article VI. Twenty-one active and life members present shall constitute a quorum for the valid transaction of the business of the Society.

Chapter IV.—Dues and Assessments

Article I. Dues shall be for the calendar year and shall be paid to the Secretary-Treasurer before April 1st of each year.

Article II. Active members shall pay twenty dollars, except that members who have been graduated in medicine less than three years shall pay for their first year ten dollars, for their second year fifteen dollars, and thereafter twenty dollars.

Article III. Associate members shall pay five dollars.

Article IV. Special assessments may be proposed only by the Executive Committee at any meeting; notice of the proposed assessment shall then be sent to every member stating the regular or special meeting at which action will be taken.

Article V. Members who have not paid their dues and assessments before the first day of April of each year, shall, after due notice of their delinquency, be placed on the list of members in arrears for dues and assessments. If dues and assessments are not paid by December 31st of each year, such delinquents shall be automatically dropped from membership in the Society. Members so dropped may, after report by the Committee of Censors, be reinstated by the Society upon payment of arrears in dues and assessments.

Article VI. Dues and assessments, upon recommendation of the Executive Committee, may be temporarily or permanently remitted by a two-thirds vote at any stated meeting.

Chapter V.—Officers and Their Duties

Article I, Section 1. The officers of this Society shall be a a President, a President-elect, who shall assume office the following year, a First and a Second Vice-President, a Secretary-Treasurer, a Delegate and an Alternate to the House of Delegates of the American Medical Association.

Sec. 2. The President shall preside over the meetings of the Society; sign papers and disbursement warrants of the Society; call special meetings at the request of the Executive Committee or any ten members; deliver an annual address during his term after January 1st; be *ex officio* a member of the Executive Committee; and perform such duties as may be imposed on him by the Society, and in general as pertain to his office.

Sec. 3. The Vice Presidents shall, in order of their rank, assume the duties of the President during his absence or inability to act.

Sec. 4. The Secretary-Treasurer shall make full records of the proceedings of the Society; and after their approval by the Society preserve them in secure and permanent bound form; he shall act as reading clerk at the meetings; he shall be custodian of the official seal of the Society and be responsible for all records, papers, and other similar property of the Society, which he shall keep in secure and accessible form; he shall obtain the signatures of newly-elected members to the obligation to be governed by the Constitution and By-laws of the Society; he shall notify members and officers of their election, inform committee appointees of their selection and the duties with which they are charged, advise persons concerned of action affecting them taken by the Society, and in general conduct the correspondence of the Society; he shall prepare proper credentials for the Delegate to the American Medical Association; he shall maintain a complete and accurate list of active, life, associate and honorary members of the Society; he shall cooperate with the Program Committee in securing and arranging for the presentation of clinical cases, specimens, and papers at the meetings of the Society; he shall, a sufficient time previously, send to all members, and to such others as may be designated, an announcement of each regular and special meeting, specifying the cases, specimens and papers to be presented, the names of all applicants for membership to be voted on, reports of the Executive Committee on the investigation of accused members to be presented or considered and acted on, amendments to the Constitution and By-laws and proposed special assessments to be voted on, postponed stated business, interim elections, and so far as possible, all important items and the general character of the business to be transacted, a notice of the names of members resigned, dropped or expelled from the Society; he shall, upon the request of an officer of a recognized section, announce upon any regular or special notice of the Society the notice of program of a meeting of that section; he shall also collect and have charge of all moneys due the Society, sending out bills therefor at proper times, deposit all moneys to the credit of the Society in a bank designated by it for that purpose, keep the accounts of the Society with its members and others, make all disbursements ordered by the Society on warrants authenticated by the President, keep an accurate record of receipts, disbursements, funds and assets; he shall be bonded at the Society's expense; at each annual meeting, or at any time he is so ordered by the Society, shall render a statement of his accounts, with vouchers, which shall be audited by the Executive Committee; he shall be ex officio a member of the Executive Committee without vote; and perform such other duties as may be imposed on him or pertain to his office. For his services he shall receive a salary of five hundred dollars per annum.

Sec. 5. The Delegate to the House of Delegates of the American Medical Association, or, if he be unable to serve, the Alternate, shall attend the sessions of the House of Delegates of the American Medical Association as the accredited representative of this Society; and shall make report thereon at the next stated meeting of the Society. The Delegate to the House of Delegates of the American Medical Association shall be a member of the Executive Committee, ex officio.

Chapter VI.—Election and Terms of Officers and Elective Committees

Article I. Elections shall be by ballot, and a majority of the votes cast shall be necessary to elect. In case no nominee receives a majority of the votes on the first ballot, the nominee receiving the fewest number of votes shall be dropped and a new ballot taken. This procedure shall be continued

until one of the nominees receives a majority of the votes cast, when he shall be declared elected.

Article II. Nominations for office shall be made orally at the first meeting in March. The election of officers shall be held at the annual meeting.

Article III. The fiscal year shall be from the first day of July to the following thirtieth day of June.

Article IV, Section 1. The officers, except the President, the Delegate and the Alternate, shall be elected yearly at the annual meeting, and shall assume office and serve during the following fiscal year or until their successors assume office.

Sec. 2. The President and Vice Presidents shall be ineligible for reelection until after two years from the expiration of their terms of office.

Article V. The Delegate and the Alternate (who must have been members of the American Medical Association for at least two years) shall be elected biennially at the annual meeting of odd number years to serve for the following two fiscal years.

Article VI. One elective member of the Executive Committee shall be elected yearly at the annual meeting to serve for the following four fiscal years. Elective members of the Executive Committee shall be ineligible for reelection as elective members before one year after the expiration of the four year term.

Article VII. Two elective members of the Compensation, Contract and Industrial Medicine Committee shall be elected yearly at the annual meeting to serve for the following two fiscal years.

Article VIII. Whenever a vacancy occurs in any office or elective committee, an election for the remainder of the term of office may be held at any regular meeting after due notice shall have been sent to all active members.

Chapter VII—Committees

Article I. There shall be standing, regular and special committees.

Article II, Section 1. The standing committees shall be an Executive Committee, a Committee of Censors, a Committee on Program, a Committee on Public Information, a House Committee, a Committee on Public Health, and a Compensation, Contract and Industrial Medicine Committee.

Sec. 2. The terms of office of all members of the present Executive Committee or of any member or members thereof taking office prior to July 1, 1938, shall terminate on that date.

Sec. 3. At the annual meeting of the Society in May, 1938, there shall be elected four members of the Executive Committee to take office July 1, 1938, and of the four so elected the one receiving the highest number of votes shall hold office for a term of four years, the next highest for three years, the next highest for two years, and the next highest for one year. Thereafter, at the annual meeting of the Society in May, there shall be elected one member of the Executive Committee who shall hold office for a term of four years. In the event of the death, resignation or other inability of an elective member to serve, or in the event of the election of such member as President, President-elect, or Delegate to the American Medical Association, the vacancy on the Executive Committee thus created may be filled by election for the unexpired term at any regular or special meeting of the Society, provided due notice

of such election shall have been sent to all active and life members. An elected member of the Executive Committee shall be ineligible for reelection to this Committee for a period of two years following the completion of his or her term of office.

Sec. 4. After July 1, 1938, the Executive Committee shall consist of the President, President-elect, and Delegate to the American Medical Association, all ex officio, and four elected members whose term of office shall be four years except as provided in Section 3 above. The Secretary of the Society shall be ex officio secretary to the Executive Committee without vote. Four members of the Committee shall constitute a quorum for the transaction of business.

Sec. 5. The chairmen of all standing committees, except the Executive Committee, shall be appointed by the President.

Sec. 6. The Compensation, Contract and Industrial Medicine Committee shall consist of four elective members and a chairman.

Sec. 7. The Committee on Public Health shall consist of not less than seventeen members.

Sec. 8. All other standing committees shall consist of five members each.

Sec. 9. All members of standing committees, except the elective members, shall be appointed by the President upon his assumption of office, to serve one year or until their successors are appointed.

Sec. 10. Vacancies in appointive positions on standing committees shall be filled by appointment by the President for the unexpired term.

Article III, Section 1. The Executive Committee shall maintain the following organization: The senior elected member shall serve as Chairman, his immediate junior as Vice Chairman, and the Secretary of the Society as Secretary without vote. It shall keep full records of its proceedings. It shall hold meetings at the discretion of its chairman or at the call of any two of its members. It shall keep informed in all matters pertaining to the objects, interests, policy and conduct of the Society, and report to the Society such recommendations as it may deem advisable. It shall exercise general oversight over the work of the officers, committees and sections. It shall annually audit the accounts of the Secretary-Treasurer. It shall supervise the affairs of the Society's publication and shall, in July of each year, elect for the term of one fiscal year, the Managing Editor and Editor of the Medical Annals of the District of Columbia and assign them their duties; it shall fill vacancies in the editorial staff by election for the unexpired term. It shall receive, investigate and report to the Society, in the manner herein prescribed, all charges against members of violation of requirements of the Constitution or By-laws. It shall endeavor to adjust minor complaints and differences of members, without reporting to the Society; subject, however, to appeal to the Society. It shall consider, report upon, and under the direction of the Society, promote or oppose legislative matters affecting the Society or the health of the community. It shall perform such duties as the Society may assign to it; in emergencies it may act for the Society, reporting such action to the Society; and it shall be subject to the control and direction of the Society. No provision of this section shall be construed to grant authority to the Executive Committee to commit the Society on any question of public policy; action on such matters shall always be in accordance with the provisions of Chapter III, Article II, of the Constitution.

Sec. 2. The Committee of Censors shall investigate and report upon all applicants for membership and receive all complaints as provided in Chapter X, Article I.

Sec. 3. The Committee on Program shall secure and arrange for the presentation of medical cases, specimens and papers at the meetings of the Society, and shall prepare the notices of the business and scientific programs of the meetings to be sent to the members by the Secretary-Treasurer.

Sec. 4. The Committee on Public Information shall disseminate among the public suitable information concerning medical and hygienic matters.

Sec. 5. The House Committee shall have general supervision of the Society's Building and all the property contained therein. It shall make all necessary purchases for emergency and minor repairs and changes to maintain the property and for the supplying of refreshments, and shall approve all bills contracted for under the authority of this provision. It shall attend to all arrangements pertaining to entertainments except the scientific program. It shall recommend to the Society such extensive and unusual repairs as may be deemed necessary for the safety and value of the property. It shall hire the service employees required and determine their compensation, subject to the approval of the Executive Committee. It shall, subject to the approval of the Executive Committee, prescribe such rules and regulations necessary for the proper government of the building and post them on the bulletin board, and shall report infractions of these rules to the Executive Committee.

Sec. 6. (a) The Committee on Public Health shall act as liaison committee between the various civic organizations and the Society. It shall be its duty to keep the Society informed of any activities which would affect in any way the health of the community and the organized profession. From time to time it shall seek the advice of the Society on such matters and actively pursue any course according to instructions from the Society.

(b) It shall maintain subcommittees on communicable diseases, on tuberculosis, on venereal diseases, on public sanitation, and on mental health, and shall appoint such other subcommittees from time to time as may be expedient to perform special duties as they may arise.

Sec. 7. (a) The Compensation, Contract and Industrial Medicine Committee shall act in matters of difference between members of the Society and insurance carriers. The chairman of the committee is empowered to appoint two members of the Society, not necessarily members of the committee, to meet with two qualified representatives of insurance carriers for the settlement of any disputed bills between physicians and carriers. No such arbitrator shall sit in any case in which he, or a party he represents, is interested. If no agreement can be reached by such arbitrators, the matter in dispute shall be referred to the full committee, and any member of the Society submitting to arbitration as herein provided shall abide by its final decision.

(b) It shall investigate all charges of unethical conduct against members of the Society as regards workmen's compensation, industrial medicine and/or contract practice; and to review contracts between physicians and employers on any matter pertaining to workmen's compensation or contract practice.

(c) In all matters pertaining to workmen's compensation and/or contract practice, it shall be a fact-finding committee and to this end shall make such investigations as it may deem proper or as it may be requested to do by the Executive Committee or by the Society.

(b) Upon failure to amicably adjust any case which has received the consideration of the committee, or if it finds that which in its opinion indicates a serious breach of medical ethics on the part of a member of the Society, it shall in such instances report its findings, with definite recommendations, to the Committee of Censors and/or the Executive Committee.

(e) It shall prepare a list of qualifications for members in compensation practice for adoption by the Society.

(f) It shall adopt a fee table for compensation work.

Article IV. Section 1. Regular committees shall be committees provided for by the Constitution, other than the standing committees. Regular committees shall be:

Sec. 2. A Nominating Committee as provided for in Chapter VI, Article II.

Sec. 3. An Obituary Committee appointed by the President upon the death of each member. It shall present a suitable memorial and resolutions to the Society at the earliest practical date.

Sec. 4. A Hospital Committee of ten members and a chairman shall be appointed by the President upon his assumption of office to serve for one year. This committee shall investigate the ethical relations between the hospitals and dispensaries in the District of Columbia and physicians and recommend to the Society at the stated meeting in November a list of hospitals to be approved by the Society. Recommendations of changes in this approved list may be made at any business meeting. This committee shall inform the Committee of Censors of the names of members who are associated in any way with hospitals which are not on the approved list.

Sec. 5. A Medical Defense Committee as provided in the following articles:

(a) Active members of the Society are entitled, subject to the conditions and limitations hereinafter specified, to aid from the Society in defending themselves against unwarranted claims based on alleged malpractice.

(b) The Executive Committee shall appoint a committee, to be known as the Medical Defense Committee, to administer the provisions of this section. The Medical Defense Committee shall consist of three active members of the Society in good standing and the Secretary-Treasurer of the Society, ex officio. No member of the Executive Committee shall be eligible for membership on the Medical Defense Committee; in the event of the election of a member of the Medical Defense Committee to membership on the Executive Committee, his term as a member of the Medical Defense Committee shall expire on the day previous to the day when he assumes office as a member of the Executive Committee. All appointments shall be made in the month of March, to take effect on the first day of April next following and to continue for three years from and including that day. Vacancies shall be filled by appointment by the Executive Committee for the unexpired term. All appointments shall be made so that the term of one member, and of not more than one member, shall expire on March 31 of each year. Any member of the Medical Defense Committee may be removed by the Executive Committee, after hearing, for due cause.

The Medical Defense Committee shall elect a chairman in the month of April of each year or as soon thereafter as is practicable, to serve for one year. The Secretary-Treasurer of the Society shall be an ex officio member of the Medical Defense Committee, without vote, shall serve as its Secretary, shall supply all needed clerical assistance, and shall be custodian of its records. The Medical Defense Committee shall make an annual report to the Society in the month of May of each year, with such recommendations as the committee deems proper.

(c) The Medical Defense Committee shall investigate all claims based on alleged civil malpractice referred to it by members entitled to the benefits of this section. If after the investigation a claim is believed by the committee

to be well founded, the committee, if the interested member so requests, shall endeavor to effect an equitable settlement. If a claim is believed by the committee not to be well founded, or if without fault on the part of the interested member an equitable settlement cannot be reached in a well founded claim, the committee, with the consent of the interested member, shall conduct the defense of the case. The committee, however, shall not assist in the defense of any criminal suit. The committee shall not assist in the defense of any claim if, in its judgment, the member was under the influence of narcotics or intoxicating liquor when the act or default constituting the alleged malpractice occurred, but the committee may, with the consent of the Executive Committee, cooperate with the member in the equitable adjustment of any such claim, having in mind the interests of the medical profession as well as of the offending member.

The Medical Defense Committee shall diligently inquire into the circumstances surrounding each case of alleged malpractice coming to its notice, whether the claim was referred to it by a member of the Society or came to its notice in any other manner, to ascertain the circumstances that gave rise to it. The committee may take such action as it deems proper to eliminate preventable causes that are believed to breed claims. The committee shall particularly report its findings with respect to the causes and prevention of malpractice claims, with such recommendations as it deems proper, in its annual report.

(d) The Medical Defense Committee is authorized to expend not more than three hundred dollars in the defense of any one claim, except that an additional two hundred dollars may be expended in any case in which in the judgment of the Executive Committee the facts warrant and in which the Executive Committee has previously approved such additional expenditure. The interested member, however, may employ additional counsel of his own choice and at his own expense and may otherwise contribute to the defense of the case, provided that the Medical Defense Committee retains at all times complete control and direction of the case.

(e) The Society will pay no judgments rendered or compromise effected, nor will it indemnify any member on account of any such judgment or compromise.

(f) If a member applying to the Medical Defense Committee for assistance is protected by an insurance policy, indemnifying him against loss by reason of malpractice, the committee shall lend such assistance, except financial, as in its judgment is advisable.

(g) If the Medical Defense Committee decides that a member who has sought its aid is not entitled to it, the member may appeal to the Executive Committee. The judgment of the Executive Committee shall be final. If, however, a decision adverse to the member is rendered by the Executive Committee, and the member thereafter defends his case in the trial court to a successful termination, the Medical Defense Committee, with the approval of the Executive Committee, may reimburse him to the amount that the Medical Defense Committee would have expended in his defense had the committee conducted his defense in the first instance.

(h) The Executive Committee shall establish a separate fund for the purpose of carrying this Section into effect, to be known as "The Medical Defense Fund of the Medical Society of the District of Columbia." An initial allotment of fifteen hundred dollars from the general funds of the Society shall be made by the Executive Committee and placed to the credit of this fund. Thereafter one dollar shall be set aside without further action by the Executive Committee, from the annual dues of each member at the time

of the payment of such dues, and placed to the credit of this fund, until the fund amounts to three thousand dollars. Thereafter, whenever the fund falls below three thousand dollars, the Executive Committee shall allot such further amounts as may be necessary to restore it to three thousand dollars, but in no year shall the amount so allotted exceed an amount equal to one dollar for each active member of the Society. The Medical Defense Fund shall be disbursed by the Secretary-Treasurer of the Society on vouchers signed by members of the Medical Defense Committee and approved by the Executive Committee.

(i) Every active member of the Society in good standing, whose dues are paid before April 1st of any year, shall be entitled to the benefit of this section. Every member admitted to active membership subsequent to March 31 in any year, whose dues are paid at the time required by the Constitution, shall be entitled to such benefits from the time when he qualified as a member of the Society until March 31 next following.

No member shall be entitled to the benefits of this section in any case in which the cause of action arose prior to his becoming a member or prior to the date when this section became effective, or while the member is under suspension or otherwise not in good standing. The estate of a deceased member shall be entitled to the same benefits under this section as the member would be entitled to if he were living.

(j) Members entitled to and desiring the assistance of the Medical Defense Committee shall request such assistance in writing. As a condition precedent to such assistance, the member shall agree in writing that he will not compromise or settle his case without the consent of the committee and that the committee shall have complete control of the case. Without such a written agreement the Medical Defense Committee shall render only such assistance as provided in Section 5, Paragraph (f). A member desiring or receiving assistance from the committee shall immediately send to the Secretary of the committee every letter, process of court, or other evidence of a pending or threatened malpractice suit received by him and shall furnish such additional information in such detail and in such manner as the committee may require. Every member of the Society shall, on request, appear before the Medical Defense Committee and cooperate with it to the fullest extent in the investigation and the defense of any case, so far as he can ethically or legally do so.

(k) The Medical Defense Committee shall obtain the services of competent counsel as occasion requires, to advise and defend members entitled to the benefits of this section; but the member involved in any case shall have the right to employ additional counsel, at his own choice and at his own expense, provided, however, that the Medical Defense Committee retains complete control of the case.

Article V. Special committees may be established by vote of the Society for any special or temporary purpose as the needs for such committees demand.

Chapter VIII.—Sections

Article I. Whenever a sufficient demand therefor arises, active, life and associate members may organize sections, composed of special classes of the membership or devoted to the consideration and promotion of special branches of medical science, and art, by securing the adoption of amendments to this Constitution recognizing and establishing each section by name as a definite department of this Society. Each section shall form and maintain an organization by adopting By-laws, and annually in May electing a chairman, vice chairman, secretary and treasurer, to serve for the ensuing fiscal year. Any active, life or associate member of the Society may, at his option, join any

section, but must conform to such financial or other regulations as may be imposed by the section, under penalty in case of not so conforming of forfeiting membership in the section. Each section shall arrange for the time and place of its meetings, but shall not hold sessions at the same time with the regular meetings of the Society; by arrangement with the Society or the Committee on Program, however, the scientific proceedings of regular meetings of the Society may, either occasionally or at stated intervals, be conducted by the sections. All members of the Society shall have the right to attend the scientific sessions of any section, but not without permission or invitation to participate in the discussions (except when held at the regular meetings of the Society). So far as possible, notices of the programs of the meetings of the sections shall be sent to all the members of the Society in conjunction with the notices of the weekly meetings of the latter. The transactions of the sections may be published with the transactions and proceedings of the general Society. Sections may at any time submit to the general Society reports or recommendations for the information or action of the latter. Each section shall be governed and conducted by its own active and life members; but its proceedings and organization must conform to the Constitution and By-laws of this Society, and it shall be subject to the control of, and appeal to, the Society; provided, that it shall require a two-thirds vote of the Society to reverse any action taken by any section. The Society shall not, without its consent, be put to any expense on behalf of any section. Each section shall furnish to the Society a copy of its By-laws and all amendments thereto, and shall submit such information concerning its operations as the Society may at any time require. Each section at the annual meeting shall submit a report of its proceedings during the preceding year, giving the names of its officers, the number of its members, the number of and attendance at its meetings, the work accomplished, and in general such information as may keep the Society advised as to its activity, success and character. The existence of any section may be terminated by the adoption of an amendment to this Constitution annulling its recognition and establishment.

Article II. The following sections are recognized and established as definite departments of this Society:

Section 1, on Internal Medicine
Section 2, on Ophthalmology, Otology, Rhinology and Laryngology.
Section 3, on Neurology and Psychiatry.
Section 4, on Pathology and Laboratory Medicine.
Section 5, on Neoplastic Diseases.
Section 6, on Gastro-enterology.
Section 7, on Pediatrics.

Chapter IX.—Professional Obligations

Article I. Section 1. The Principles of Medical Ethics of the American Medical Association shall be binding upon the members of the Society.

Sec. 2. Members shall comply when summoned as witnesses in cases under investigation by the Executive Committee; Committee of Censors; Compensation, Contract and Industrial Medicine Committee; Medical Defense Committee; and the Hospital Committee.

Sec. 3. All duties, obligations and regulations as to their professional conduct and relations with this Society and with one another which shall be imposed by the Constitution and By-laws of this Society shall be binding and mandatory upon all members, and for violation thereof they shall be subject to discipline by the Society.

Sec. 4. The following obligation shall be signed by each new member within three months of his election to membership: "I hereby agree to be governed by the Constitution and By-laws of the Medical Society of the District of Columbia, and to abide by the regulations prescribed therein."

Article II. Duties and Professional Relations of Members with Reference to Private Practice.

Section 1. In giving certificates of illness or of physical or mental condition, the physician shall have regard for the accepted code of ethics and the legal code, both of which impose upon him the duty of holding inviolate the confidential disclosures of patients, and shall not divulge the diagnosis except when required to do so by law, or under the terms of a contract to which the patient is a party, or upon the explicit request of the patient.

Sec. 2. It shall be the duty of members of this Society to discourage patients from defrauding other members, and it is expected that the members will use all just and proper means to assist one another in the collection of their fees for professional services.

Sec. 3. No member of this Society who has been called in as consulting physician shall assume sole charge of the patient, during the same illness, unless he shall have been specifically requested to do so by the attending physician.

Sec. 4. No member of this Society shall offer, solicit, give or receive any commission for recommending or referring patients for general or special treatment, diagnosis, or operation; or shall solicit or accept any commission from any pharmacist or other dealer in supplies and appliances for the sick and injured on account of patients referred to them.

Sec. 5. Any member guilty of violating any of the public laws relating to medical and surgical practice shall be subject to discipline by the Society.

Article III. Duties and Professional Relations of Members with Reference to Compensation, Contract and Industrial Practice.

Section 1. "It is unprofessional for a physician to dispose of his services under condifions that make it impossible to render adequate service to his patient or which interfere with reasonable competition among the physicians of a community. To do this is detrimental to the public and to the individual physician, and lowers the dignity of the profession." (Chap. III, Art. VI, Sec. 2, Principles of Medical Ethics, American Medical Association.) No member of the Society shall enter into a written, verbal, or implied contract or agreement of employment with any person, firm, corporation, association, club, lodge, or other similar organization, including the Federal and/or District Government, the terms of which contract or agreement are in violation of the principles herein expressed. The customary professional relationship of a physician to his patients, upon the basis of individual fees for services rendered, shall not be regarded as a contract within the meaning of this section.

Sec. 2. Every member of the Society before entering into a contract or agreement for rendering professional services shall submit a copy of his contract, if written, or a true declaration of the terms of the agreement, in writing, to the Committee on Compensation, Contract and Industrial Medicine for approval. In the event that the Committee disapproves the contract, a member may appeal to the Executive Committee.

Sec. 3. Members desiring to do compensation practice shall equip themselves to meet the qualifications provided for in Chapter VII, Article III, Section 7, paragraph (e).

Sec. 4. It shall be unprofessional for members in compensation practice to place posters, or for them or their agents to solicit work, directly or indirectly, or to charge less than the fees provided in Chapter VII, Article III, Section 7, paragraph (f).

Sec. 5. A member called to treat a patient injured in industry, and insured under the Workmen's Compensation Act, shall promptly and from time to time contact the adjuster of the company insuring the employer of the patient, making all suitable efforts to determine his identity in cases where this may be necessary, inform him of all the circumstances of the case and keep him posted on its progress. If, bearing in mind the qualifications of members doing this class of practice, the member feels aggrieved by any action of the Company, he may present the matter to the Compensation, Contract and Industrial Medicine Committee, which shall make every effort to effect a satisfactory adjustment and to safeguard the interests of the member making the appeal.

Sec. 6. Any member notified by employers and/or insurance companies to examine and/or treat an injured employee already under the care of another member can do so only after a full and frank discussion with the member in charge to the end that he, the member in charge, shall completely understand the situation; to do otherwise is unprofessional. If, following this discussion, the member in the employ of the insurance company assumes the treatment of the patient, and the member originally in charge feels himself aggrieved, he may appeal to the Compensation, Contract and Industrial Medicine Committee; and at hearings held by this committee in such cases the member in the employ of the insurance company must be prepared to justify his action, or be liable to citation to the Committee of Censors under charges of unprofessional conduct.

Article IV. Duties and Professional Relations of Members with Reference to Hospitals and their Medical Staffs.

Section 1. Members shall not accept appointment to, or continue to serve upon, the medical staff of any hospital or dispensary which is not approved by the Society. A list of approved hospitals and dispensaries shall be available in the Society's office.

Sec. 2. Members of the Society who are members of the staff of any hospital or dispensary, when attending patients in such hospital or dispensary, shall insist on proper payment for their services, except in the case of patients who are unable to pay.

Sec. 3. No member of the Society who is a member of the staff of any hospital receiving patients in private accommodations, shall attend such private patient, sent to the hospital by a member of the Society, unless specifically requested to do so by the physician at whose instance the patient entered the hospital.

Sec. 4. In the case of a private patient brought to a hospital or dispensary in emergency, no member of the Society, acting as a member of the staff of such hospital or dispensary, shall render other than the necessary first aid treatment, pending the arrival of the patient's physician. In every instance the patient or his nearest relative or friend shall be asked to choose a physician.

Sec. 5. No member of the Society shall engage in any professional capacity whatsoever with any organization, group or individual, by whatever name called or however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, which has not been approved by the Society.

The Executive Committee is authorized and directed to prepare an approved list of organizations, groups and individuals, by whatever name called and however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, and the same shall be kept in the office of the Secretary-Treasurer. Before any such organization, group or individual can be placed on the approved list of the Society, such organization, group or individual, or the member of the Society proposing professional relations therewith, shall submit to the Compensation, Contract and Industrial Medicine Committee such evidence as the Committee or the Society may require showing the character, activities, financial condition and ethical standards of said organization, group or individual, and after considering the same, said committee shall make a report of its investigation and findings to the Executive Committee for such action as it may deem necessary.

Chapter X.—Discipline

Article I. The Committee of Censors shall receive all complaints and evidence of violations of the regulations of the Society or of alleged unprofessional and unethical practice and malpractice by members of this Society and if in its opinion the complaint or evidence is well founded, it shall prepare against the accused charges in writing, stating the facts in detail and forward them to the Executive Committee. If the Committee of Censors decides that there is no ground for action against the accused and the member or committee making the complaint does not agree with the decision, the complainant may then prepare charges in writing, stating the facts in detail and forward them to the Executive Committee.

Article II. Charges against any member or members must be submitted in writing, giving specific facts, to the Executive Committee, and shall then be fully and impartially investigated by it, the accused being given a fair hearing. Should this committee by a two-thirds vote find the accused guilty of a violation of the regulations of the Society, or of unprofessional or unethical practice or malpractice of which the committee shall be exclusive judge, it shall submit its report and recommendations in writing to the Society at a regular meeting, due notice of such prospective report to be previously sent to all active members; the matter shall then lie over until a subsequent regular or special meeting to be fixed by vote of the Society; at which meeting (of which due notice shall be sent to all active members) the matter shall be discussed and acted upon, and such punishment (reprimand, fine, suspension, expulsion, or the like) may be imposed as may be determined upon a concurrence of two-thirds of the votes cast. No punishment shall be imposed upon any member except after the foregoing procedure is carried out and by a two-thirds vote.

Article III. Proceedings for the impeachment of any officer or committee member shall be instituted and conducted in a similar manner as specified in the foregoing article.

Article IV. Any member who changes his occupation in such a way as to render him ineligible for membership in this Society may, unless he resign, be proceeded against in the manner specified in the foregoing articles with a view to terminating his membership.

Chapter XI.—By-laws and Amendments

Article I. By-laws not inconsistent with this Constitution may be adopted by a favorable concurrence of two-thirds of the votes cast at any stated meeting, after having been proposed in writing at a previous stated meeting and a copy thereof been sent to all active members with a notice of the meeting at which their adoption is to be voted on.

Article II. The operation of any By-law may, at any meeting and for a definite purpose, be suspended by a two-thirds vote; but for that purpose and at that meeting only.

Article III. Amendments to this Constitution or By-laws may be submitted in writing at any stated meeting and referred to the Executive Committee for report. A copy of the proposed amendment shall be sent to each member with the notice of the following stated meeting at which action shall be taken. A favorable concurrence of two-thirds of the votes cast shall result in adoption.

Article IV. No provision of this Constitution shall be suspended or abrogated under any circumstances whatever, even by unanimous consent, except through amendment by the procedure specified in the foregoing section.

By-laws.

Article I. Order of Business.—Section 1. The following shall be the order of business for the meetings of the Society:

1. Call to order.
2. Reading of minutes of previous meeting.
3. Reports of officers.
4. Reports of committees and sections.
5. Election of members.
6. Election of officers.
7. Correspondence.
8. Unfinished business.
9. New business.
10. Introduction of visitors.
11. Presentation of clinical cases and pathological specimens.
12. Essays.
13. Adjournment.

Sec. 2. The time devoted to business shall not exceed thirty minutes excepting at stated and special meetings and at meeting devoted to the election of officers.

Article II. Rules of Order.—The parliamentary procedure of this Society shall be governed by Robert's Rules of Order.

Article III. Vistors.—Any reputable physicians or persons engaged in collateral sciences or arts may, at the invitation of any member, attend the scientific meetings of the Society. Applicants for membership in the Society may also attend the meetings during the pendency of their applications. Medical officers of the public services while stationed in or near Washington are given a standing invitation to attend the scientific meetings of the Society and its Sections, and notices of the meetings shall at the order of the Society be sent to such as may so desire. The privilege of visiting the meetings shall always, however, be subject in individual cases to the will of the Society.

Article IV. Guest cards shall be issued only to distinguished members of the medical profession as medical educators, research workers and physicians who hold a high place in the official life of this or other Governments and who have been appointed or assigned to duty in Washington for a limited time. This does not include the regular assignment of physicians in the United States Army, Navy, or Public Health Service to local duty. Any member of the Society may nominate a Guest in writing, stating his qualifications, and forward it to the Committee of Censors, who shall report their finding to the Executive Committee where the final decision in the award of a Guest Card shall be made. The term of the Guest Card shall be for the duration of the

fiscal year in which the Guest Card is issued. Guests shall be placed on the Society's mailing list and shall be privileged to attend and take part in the scientific meetings of the Society.

Article V. Essays.—No papers shall be presented (without express permission) before the Society that have been previously elsewhere read or published. The time allowed for delivery of essays shall be limited to thirty minutes; for presentation of cases or specimens, to ten minutes; and for discussions, to seven minutes each; but these time limits may be extended by majority consent of the Society.

Article VI. Motions or resolutions involving the expenditure of money shall be referred to the Executive Committee for a report before action is taken.

Article VII. Forms of Application for Membership.—The following forms are prescribed for application for active and associate membership in this Society:

Active Membership.

Washington, D. C., ..., 19....

To the Medical Society of the District of Columbia:

The undersigned, a legally qualified practitioner of medicine, hereby applies for active membership in the Medical Society of said District, and respectfully submits the following information as to his qualifications therefor: Full name; date of birth; place of birth; college of graduation as Doctor of Medicine, date of such graduation; date licensed by the Commission on Licensure, license number, series; date of beginning the practice of medicine in the District of Columbia. At what times and places, other than this District, have you practiced medicine? Name the medical and scientific societies and associations of which you have been a member, indicating those in which you still retain membership. Name the public and institutional appointments which you have had, indicating the dates of such connections, and specifying the institutions with which you still retain connection. Are you solely or mainly engaged in the lawful practice of medicine in the District of Columbia? Are you engaged in any business, trade or profession, other than the practice of medicine? If so, please specify. What degrees have you, other than Doctor of Medicine? Degree, College, Year. Have you previously made application for membership in this Society? If so, when? I hereby agree to notify immediately the Secretary of this Society of any change in my address, and to inform him at once should I engage in any business, trade, or profession other than the practice of medicine, prior to the meeting at which this application is acted upon.

Appreciating the requirement for investigating my eligibility for membership in this Society, I hereby agree to permit a full investigation and discussion by the Society and the Censors, and to abide by their decision.

Signature of Applicant .....

Address .....

Recommended by: (The signatures of three active members of the Society indorsing the applicant must be furnished.)

Note.—Active membership in the Society is limited to reputable, legally qualified practitioners of medicine who are solely or mainly engaged in the lawful practice of medicine in the District of Columbia. Applications are presented at one stated meeting and voted on at the next. The stated meetings are held on the first Wednesday in January, March, May and November of each year. After election each applicant shall, within three months, make a

payment of twenty dollars *, and sign an obligation to be governed by the Constitution and By-laws of the Society.

Medical Society of the District of Columbia

Application for Active Membership

No.

Received , 19 ; presented at the stated meeting held , 19 , and referred to the Committee of Censors for investigation and report.

, Secretary.

This is to certify that we have examined as to the qualifications of the within named applicant and found him , eligible for membership in this Society ,

, Censors.

at the stated meeting held 19

, Secretary.

Associate Membership

Washington, D. C., , 19

To the Medical Society of the District of Columbia:

The undersigned hereby applies for associate membership in the Medical Society of the District of Columbia, and submits the following information as to his qualifications therefor: Full name; date of birth; place of birth; residence; profession. State all the academic and professional degrees held by you, with the school and the date of graduation in each case. In what other business or occupation are you engaged other than the practice of your profession? How long have you been engaged in the practice of your profession? How long have you lived in your present place of residence? Name the scientific and professional societies of which you have been a member, indicating those in which you now retain membership. Name the public and institutional appointments which you have had, indicating the dates of such connections, and specifying those which you now have.

Appreciating the requirement for investigating my eligibility for membership in this Society, I hereby agree to permit a full investigation and discussion by the Society and the Censors, and to abide by their decision.

Signature of Applicant

Address

Recommended by: (The signatures of three active members of the Society indorsing the applicant must be furnished.)

Medical Society of the District of Columbia

Application for Associate Membership

No.

Received , 19 ; presented at the stated meeting held , 19 , and referred to the Committee of Censors for investigation and report.

, Secretary.

(*) Exception: Applicant has been graduated less than three years from date of election.

This is to certify that we have examined as to the qualifications of the within named applicant and found him ..... eligible for membership in this Society.

.....

Censors. ..... at the stated meeting held .....
19 ..

.....
Secretary.

Article VIII. Fees.—Section 1. The fees to be charged for professional services, subject, however, to the several rules which are appended, shall be maintained in the Society's office for the information of the membership.

Sec. 2. The table provided for in Section 1 contains the standard fees which shall be demanded; they shall be increased according to the judgment of the practitioner concerned, in all cases of extraordinary detention or attendance; also in proportion to the importance of the case, of the responsibility attached to it, and to the services rendered, when these are extraordinary. They shall be diminished at the discretion of the physician when he believes that the patient cannot afford to pay the regular fees, and yet is abla to make some compensation; but diminishing the fees except for motives of charity and benevolence is a violation of this regulation.

Sec. 3. Graduates in medicine are not entitled to gratuitous services unless they devote their entire time to the practice of medicine or by reason of age or infirmity have retired from the regular practice of medicine, or unless such graduates in medicine are in indigent circumstances.

Sec. 4. It is not designated by these regulations to prevent gratuitous services to those who are incapable of making remuneration without distressing themselves or their families.

Principles of Medical Ethics of the American Medical Association *

Chapter I.—General

Section 1. The Physician's Responsibility.—A profession has for its prime object the service it can render to humanity; reward or financial gain should be a subordinate consideration. The practice of medicine is a profession. In choosing this profession an individual assumes an obligation to conduct himself in accord with its ideals.

Sec. 2. Groups and Clinics.—The ethical principles actuating and governing a group or clinic are exactly the same as those applicable to the individual. As a group or clinic is composed of individual doctors, each of whom, whether employer, employee or partner, is subject to the principles of ethics herein elaborated, the uniting into a business or professional organization does not relieve them either individually or as a group from the obligation they assume when entering the profession.

Chapter II.—The Duties of Physicians to Their Patients

Section 1. Patience, Delicacy and Secrecy.—Patience and delicacy should characterize all the acts of a physician. The confidences concerning individual or domestic life entrusted by a patient to a physician and the defects of disposition o. flaws of character observed in patients during medical attendance should be held as a trust and should never be revealed except when imperatively required by the laws of the state. There are occasions, however, when a

* Printed by permission of the American Medical Association.

physician must determine whether or not his duty to society requires him to take definite action to protect a healthy individual from becoming infected, because the physician has knowledge, obtained through the confidences entrusted to him as a physician, of the communicable disease to which the healthy individual is about to be exposed. In such a case, the physician should act as he would desire another to act toward one of his own family under like circumstances. Before he determines his course, the physician should know the civil law of his commonwealth concerning privileged communications.

Sec. 2. Prognosis.—A physician should give timely notice of dangerous manifestations of the disease to the friends of the patient. He should neither exaggerate nor minimize the gravity of the patient's condition. He should assure himself that the patient or his friends have such knowledge of the patient's condition as will serve the best interests of the patient and the family.

Sec. 3. Patients Must Not Be Neglected.—A physician is free to choose whom he will serve. He should, however, always respond to any request for his assistance in an emergency or whenever temperate public opinion expects the service. Once having undertaken a case, a physician should not abandon or neglect the patient because the disease is deemed incurable; nor should he withdraw from the case for any reason until a sufficient notice of a desire to be released has been given the patient or his friends to make it possible for them to secure another medical attendant.

Chapter III.—The Duties of Physicians to Each Other and to the Profession at Large

Article I. Duties to the Profession

Section 1. Uphold Honor of Profession.—The obligation assumed on entering the profession requires the physician to comport himself as a gentleman and demands that he use every honorable means to uphold the dignity and honor of his vocation, to exalt its standards and to extend its sphere of usefulness. A physician should not base his practice on an exclusive dogma or sectarian system, for "sects are implacable despots; to accept their thraldom is to take way all liberty from one's action and thought." (Nicon, father of Galen.)

Sec. 2. Medical Societies.—In order that the dignity and honor of the medical profession may be upheld, its standards exalted, its sphere of usefulness extended, and the advancement of medical science promoted, a physician should associate himself with medical societies and contribute his time, energy and means in order that these societies may represent the ideals of the profession.

Sec. 3. Deportment.—A physician should be "an upright man, instructed in the art of healing." Consequently, he must keep himself pure in character and conform to a high standard of morals, and must be diligent and conscientious in his studies. "He should also be modest, sober, patient, prompt to do his whole duty without anxiety; pious without going so far as superstition, conducting himself with propriety in his profession and in all the actions of his life." (Hippocrates.)

Sec. 4. Advertising.—Solicitation of patients by physicians as individuals, or collectively in groups by whatsoever name these be called, or by institutions or organizations, whether by circulars or advertisements, or by personal communications, is unprofessional. This does not prohibit ethical institutions from a legitimate advertisement of location, physical surroundings and special class—if any—of patients accommodated. It is equally unprofessional to procure patients by indirection through solicitors or agents of any kind, or by indirect advertisement, or by furnishing or inspiring newspaper or magazine comments

concerning cases in which the physician has been or is concerned. All other like self-laudations defy the traditions and lower the tone of any profession and so are intolerable. The most worthy and effective advertisement possible, even for a young physician, and especially with his brother physicians, is the establishment of a well-merited reputation for professional ability and fidelity. This cannot be forced, but must be the outcome of character and conduct. The publication or circulation of ordinary simple business cards, being a matter of personal taste or local custom, and sometimes of convenience, is not per se improper. As implied, it is unprofessional to disregard local customs and offend recognized ideals in publishing or circulating such cards.

It is unprofessional to promise radical cures; to boast of cures and secret methods of treatment or remedies; to exhibit certificates of skill or of success in the treatment of diseases; or to employ any methods to gain the attention of the public for the purpose of obtaining patients.

Sec. 5. Patents and Perquisites.—It is unprofessional to receive remuneration from patents for surgical instruments or medicines; to accept rebates on prescriptions or surgical appliances, or perquisites from attendants who aid in the care of patients.

Sec. 6. Medical Laws—Secret Remedies.—It is unprofessional for a physician to assist unqualified persons to evade legal restrictions governing the practice of medicine; it is equally unethical to prescribe or dispense secret medicines or other secret remedial agents, or manufacture or promote their use in any way.

Sec. 7. Safeguarding the Profession.—Physicians should expose without fear or favor, before the proper medical or legal tribunals, corrupt or dishonest conduct of members of the profession. All questions affecting the professional reputation or standing of a member or members of the medical profession should be considered only before proper medical tribunals in executive sessions or by special or duly appointed committees on ethical relations. Every physician should aid in safeguarding the profession against the admission of its ranks of those who are unfit or unqualified because deficient either in moral character or education.

Article II. Professional Services of Physicians to Each Other

Section 1. Physicians Dependent on Each Other.—Experience teaches that it is unwise for a physician to treat members of his own family or himself. Consequently, a physician should always cheerfully and gratuitously respond with his professional services to the call of any physician practicing in his vicinity, or of the immediate family dependents of physicians.

Sec. 2. Compensation for Expenses.—When a physician from a distance is called on to advise another physician or one of his family dependents, and the physician to whom the service is rendered is in easy financial circumstances, a compensation that will at least meet the traveling expenses of the visiting physician should be proffered. When such a service requires an absence, from the accustomed field of professional work of the visitor that might reasonably be expected to entail a pecuniary loss, such loss should, in part at least, be provided for in the compensation offered.

Sec. 3. One Physician to Take Charge.—When a physician or a member of his dependent family is seriously ill, he or his family should select a physician from among his neighboring colleagues to take charge of the case. Other physicians may be associated in the care of the patient as consultants.

Article III. Duties of Physician in Consultations

Section 1. Consultations Should Be Encouraged.—In serious illness, especially in doubtful or difficult conditions, the physician should request consultations.

Sec. 2. Consultation for Patient's Benefit.—In every consultation, the benefit to be derived by the patient is of first importance. All the physicians interested in the case should be frank and candid with the patient and his family. There never is occasion for insincerity, rivalry or envy and these should never be permitted between consultants.

Sec. 3. Punctuality.—It is the duty of a physician, particularly in the instance of a consultation, to be punctual in attendance. When, however, the consulant or the physician in charge is unavoidably delayed, the one who first arrives should wait for the other for a reasonable time, after which the consultation should be considered postponed. When the consultant has come from a distance, or when for any reason it will be difficult to meet the physician in charge at another time, or if the case is urgent, or if it be the desire of the patient, he may examine the patient and mail his written opinion, or see that it is delivered under seal, to the physician in charge. Under these conditions, the consultant's conduct must be especially tactful; he must remember that he is framing an opinion without the aid of the physician who has observed the course of the disease.

Sec. 4. Patient Referred to Specialist.—When a patient is sent to one specially skilled in the care of the condition from which he is thought to be suffering, and for any reason it is impracticable for the physician in charge of the case to accompany the patient, the physician in charge should send to the consultant by mail, or in the care of the patient under seal, a history of the case, together with the physician's opinion and an outline of the treatment, or so much of this as may possibly be of service to the consultant; and as soon as possible after the case has been seen and studied, the consultant should address the physician in charge and advise him of the results of the consultant's investigation of the case. Both these opinions are confidential and must be so regarded by the consultant and by the physician in charge.

Sec. 5. Discussions in Consultation.—After the physicians called in consultation have completed their investigations of the case, they should meet by themselves to discuss conditions and determine the course to be followed in the treatment of the patient. No statement or discussion of the case should take place before the patient or friends, except in the presence of all the physicians attending or by their common consent; and no opinions or prognostications should be delivered as a result of the deliberations of the consultants, which have not been concurred in by the consultants at their conference.

Sec. 6. Attending Physician Responsible.—The physician in attendance is in charge of the case and is responsible for the treatment of the patient. Consequently, he may prescribe for the patient at any time and is privileged to vary the mode of treatment outlined and agreed on at a consultation whenever, in his opinion, such a change is warranted. However, at the next consultation, he should state his reasons for departing from the course decided on at the previous conference. When an emergency occurs during the absence of the attending physician, a consultant may provide for the emergency and the subsequent care of the patient until the arrival of the physician in charge, but should no do more than this without the consent of the physician in charge.

Sec. 7. Conflict of Opinion.—Should the attending physician and the consultant find it impossible to agree in their view of a case another consultant should be called to the conference or the first consultant should withdraw. However, since the consultant was employed by the patient in order that his opinion might be obtained, he should be permitted to state the result of his study of the case to the patient, or his next friend in the presence of the physician in charge.

Sec. 8. Consultant and Attendant.—When a physician has attended a case as a consultant, he should not become the attendant of the patient during that illness except with the consent of the physician who was in charge at the time of the consultation.

Article IV. Duties of Physicians in Cases of Interference

Section 1. Criticism to Be Avoided.—The physician, in his intercourse with a patient under the care of another physician, should observe the strictest caution and reserve; should give no disingepuous hints relative to the nature and treatment of the patient's disorder; nor should the course of conduct of the physician, directly or indirectly, tend to diminish the trust reposed in the attending physician. In embarrassing situations, or wherever there may seem to be a possibility of misunderstanding with a colleague, the physician should always seek a personal interview with his fellow.

Sec. 2. Social Calls on Patient of Another Physician.—A physician should avoid making social calls on those who are under the professional care of other physicians without the knowledge and consent of the attendant. Should such a friendly visit be made, there should be no inquiry relative to the nature of the disease or comment upon the treatment of the case, but the conversation should be on subjects other than the physical condition of the patient.

Sec. 3. Services to Patient of Another Physician.—A physician should never take charge of or prescribe for a patient who is under the care of another physician, except in an emergency, until after the other physician has relinquished the case or has been properly dismissed.

Sec. 4. Criticism to Be Avoided.—When a physician does succeed another physician in the charge of a case, he should not make comments on or insinuations regarding the practice of the one who preceded him. Such comments or insinuations tend to lower the esteem of the patient for the medical profession and so react against the critic.

Sec. 5. Emergency Cases.—When a physician is called in an emergency and finds that he has been sent for because the family attendant is not at hand, or when a physician is asked to see another physician's patient because of an aggravation of the disease, he should provide only for the patient's immediate need and should withdraw from the case on the arrival of the family physician after he has reported the condition found and the treatment administered.

Sec. 6. When Several Physicians Are Summoned.—When several physicians have been summoned in a case of sudden illness or of accident, the first to arrive should be considered the physician in charge. However, as soon as the exigencies of the case permit, or on the arrival of the acknowledged family attendant or the physician the patient desires to serve him, the first physician should withdraw in favor of the chosen attendant; should the patient or his family wish some one other than the physician known to be the family physician to take charge of the case the patient should advise the family physician of his desire. When, because of sudden illness or accident, a patient is taken to a hospital, the patient should be returned to the care of his known family physician as soon as the condition of the patient and the circumstances of the case warrant this transfer.

Sec. 7. A Colleague's Patient.—When a physician is requested by a colleague to care for a patient during his temporary absence, or when, because of an emergency, he is asked to see a patient of a colleague, the physician should treat the patient in the same manner and with the same delicacy as he would have one of his own patients cared for under similar circumstances. The patient should be returned to the care of the attending physician as soon as possible.

Sec. 8. Relinquishing Patient to Regular Attendant.—When a physician is called to the patient of another physician during the enforced absence of that physician, the patient should be relinquished on the return of the latter.

Sec. 9. Substituting in Obstetric Work.—When a physician attends a woman in labor in the absence of another who has been engaged to attend, such physician should resign the patient to the one first engaged, upon his arrival; the physician is entitled to compensation for the professional services he may have rendered.

Article V. Differences Between Physicians

Section 1. Arbitration.—Whenever there arises between physicians a grave difference of opinion which cannot be promptly adjusted, the dispute should be referred for arbitration to a committee of impartial physicians, preferably the Board of Censors of a component county society of the American Medical Association.

Article VI. Compensation

Sec. 1. Limits of Gratuitous Service.—The poverty of a patient and the mutual professional obligation of physicians should command the gratuitous services of a physician. But endowed institutions and organizations for mutual benefit, or for accident, sickness and life insurance, or for analogous purposes, have no claim upon physicians for unremunerated services.

Sec. 2. Contract Practice.—It is unprofessional for a physician to dispose of his services under conditions that make it impossible to render adequate service to his patient or which interfere with reasonable competition among the physicians of a community. To do this is detrimental to the public and to the individual physician, and lowers the dignity of the profession.

By the term "contract practice" as applied to medicine is meant the carrying out of an agreement between a physician or a group of physicians, as principals or agents, and a corporation, organization or individual, to furnish partial or full medical services to a group or class of individuals for a definite sum or a fixed rate per capita.

Contract practice per se is not unethical. However, certain features or conditions if present make a contract unethical, among which are: 1. When there is solicitation of patients, directly or indirectly. 2. When there is underbidding to secure the contract. 3. When the compensation is inadequate to assure good medical service. 4. When there is interference with reasonable competition in a community. 5. When free choice of a physician is prevented. 6. When the conditions of employment make it impossible to render adequate service to the patients. 7. When the contract because of any of its provisions or practical results is contrary to sound public policy.

Each contract should be considered on its own merits and in the light of surrounding conditions. Judgment should not be obscured by immediate, temporary or local results. The decision as to its ethical or unethical nature must be based on the ultimate effect for good or ill on the people as a whole.

Sec. 3. Commissions.—When a patient is referred by one physician to another for consultation or for treatment, whether the physician in charge accompanies the patient or not, it is unethical to give or to receive a commission by whatever term it may be called or under any guise or pretext whatsoever.

Sec. 4. Direct Profits to Lay Groups.—It is unprofessional for a physician to dispose of his professional attainments or services to any lay body, organization, group or individual, by whatever name called, or however organized, under terms or conditions which permit a direct profit from the fees, salary or compensation received to accrue to the lay body or individual employing him. Such a procedure is beneath the dignity of professional practice, is unfair competi-

tion with the profession at large, is harmful alike to the profession of medicine and the welfare of the people, and is against sound public policy.

Chapter IV.—The Duties of the Profession to the Public

Section 1. Physicians as Citizens.—Physicians, as good citizens and because their professional training specially qualifies them to render this service, should give advice concerning the public health of the community. They should bear their full part in enforcing its laws and sustaining the institutions that advance the interests of humanity. They should cooperate especially with the proper authorities in the administration of sanitary laws and regulations. They should be ready to counsel the public on subjects relating to sanitary police, public hygiene and legal medicine.

Sec. 2. Public Health.—Physicians, especially those engaged in public health work, should enlighten the public regarding quarantine regulations; on the location, arrangement and dietaries of hospitals, asylums, schools, prisons and similar institutions; and concerning measures for the prevention of epidemic and contagious diseases. When an epidemic prevails, a physician must continue his labors for the alleviation of suffering people, without regard to the risk to his own health or life or to financial return. At all times, it is the duty of the physician to notify the properly constituted public health authorities of every case of communicable disease under his care, in accordance with the laws, rules and regulations of the health authorities of the locality in which the patient is.

Sec. 3. Public Warned.—Physicians should warn the public against the devices practiced and the false pretensions made by charlatans which may cause injury to health and loss of life.

Sec. 4. Pharmacists.—By legitimate patronage, physicians should recognize and promote the profession of pharmacy; but any pharmacist, unless he be qualified as a physician, who assumes to prescribe for the sick, should be denied such countenance and support. Moreover, whenever a druggist or pharmacist dispenses deteriorated or adulterated drugs, or substitutes one remedy for another designated in a prescription, he thereby forfeits all claims to the favorable consideration of the public and physicians.

Conclusion

While the foregoing statements express in a general way the duty of the physician to his patients, to other members of the profession and to the profession at large, as well as of the profession to the public, it is not to be supposed that they cover the whole field of medical ethics, or that the physician is not under many duties and obligations besides these herein set forth. In a word, it is incumbent on the physician that under all conditions, his bearing toward patients, the public and fellow practitioners should be characterized by a gentlemanly deportment and that he constantly should behave toward others as he desires them to deal with him. Finally, these principles are primarily for the good of the public, and their enforcement should be conducted in such a manner as shall deserve and receive the endorsement of the community.

Certificate Number 25995

State of Illinois

Office of the Secretary of State

To all to whom these Presents Shall Come, Greeting:

I, Edward J. Hughes, Secretary of State of the State of Illinois, do hereby certify that the following and hereto attached is a true photostatic copy of the Certificate of Incorporation and all amendments thereto of American Medical Association, the original of which is now on file and a matter of record in this office.

In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois. Done at the City of Springfield this 16th day of February A. D. 1939.

Edward J. Hughes, Secretary of State (Seal).

1-13935

State of Illinois

Department of State

James A. Rose, Secretary of State

To all to Whom these Presents Shall Come—Greeting:

Whereas, a certificate, duly signed and acknowledged, having been filed in the office of the Secretary of State, on the 14th day of April A. D. 1897, for the organization of the American Medical Association, under and in accordance with the provisions of "An Act Concerning Corporations," approved April 18, 1872, and in force July 1, 1872, a copy of which certificate is hereto attached.

Now, therefore, I, James A. Rose, Secretary of State of the State of Illinois, by virtue of the powers and duties vested in me by law, do hereby certify that the said American Medical Association is a legally organized Corporation under the laws of this State.

In testimony whereof, I hereto set my hand and cause to be affixed the Great Seal of State. Done at the city of Springfield, this 14th day of April in the year of our Lord

one thousand eight hundred and 97 and of the Independence of the United States the one hundred and 21st.

James A. Rose, Secretary of State. (Seal.)

3-907

2-13935

STATE OF ILLINOIS,
Cook County, ss:

To James A. Rose, Secretary of State:

We the Undersigned, David W. Graham, James T. Priestly and Joseph Eastman, citizens of the United States, propose to form a Corporation under an act of the General Assembly of the State of Illinois, entitled, "An Act concerning Corporations," approved April 18th, 1872, and all acts amendatory thereof, and that for the purposes of such organization we hereby state as follows, to-wit:

1. The name of such Corporation is the American Medical Association.

2. The object for which it is formed is to promote the science and art of medicine.

3. The management of the aforesaid American Medical Association shall be vested in a Board of nine (9) Trustees, who are to be elected as the by-laws direct.

4. The following persons are hereby selected as the Trustees to control and manage said Corporation for the first year of its corporate existence, viz: Alonzo Garcelon, G. C. Savage, I. N. Love, E. L. Montgomery, J. M. Matthews and C. A. L. Peed, David W. Graham, James T. Priestly and Joseph Eastman.

5. The location is in the City of Chicago in the County of Cook, State of Illinois.

(Signed) David W. Graham, James Taggart Priestly, Joseph Eastman.

2712

3-13935

STATE OF IOWA,
Polk County, ss:

I, O. G. Jordan, Clerk of the District Court, the same being a Court of Record, in and for said County, do hereby certify that R. Blanche Simpson before whom the annexed instrument was proven, was at the — hereof, and now is an acting Notary Public duly qualified to act as such; that under the laws of Iowa, -he is authorized to take acknowledgment and proof of deeds, administer oaths, etc.; that the annexed instrument is duly executed and acknowledged according to the laws of said State; that I am well acquainted with the signature of the said R. Blanche Simpson and believe the one subscribed to the annexed Instrument and purporting to be hers to be genuine.

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of said District Court, at my office in Des Moines, this seventh day of April, A. D. 1897.

O. G. Jordan, Clerk of the District Court. (Seal.)

4-13935

STATE OF IOWA,
County of Polk, ss:

I, R. Blanche Simpson, a Notary Public in and for the City of Des Moines, Polk County and State aforesaid, do hereby certify that on this 9th day of March A. D. 1897 personally appeared before me James T. Priestley to me personally known to be the same person who executed the foregoing statement, and acknowledged that he had executed the same for the purposes therein set forth.

In witness whereof, I have hereunto set my hand and seal, the day and year above written.

R. Blanche Simpson, Notary Public. (Seal.)

7-13935

STATE OF ILLINOIS,
County of Cook, ss:

I, Thomas H. Gault, a Notary Public in and for the City of Chicago, County and State aforesaid, do hereby certify

that on this 4th day of March A. D. 1897, personally appeared before me David W. Graham, to me personally known to be the same person who executed the foregoing statement, and acknowledged that he had executed the same for the purposes therein set forth.

In Witness Whereof, I have hereunto set my hand and seal the day and year above written.

Thomas H. Gault, Notary Public. (Seal.)

[Endorsed:] The American Medical Association. Certificate. By 759. No. 37308. 3.50. Filed Apr. 14, 1897. James A. Rose, Sec'y of State.

6-13935

STATE OF INDIANA,
Marion County, Set:

I, James W. Fesler, Clerk of the County of Marion, in the State of Indiana, and also Clerk of the Circuit Court, within and for said County and State, the same being a Court of Record, and having a seal, do hereby certify that Charles E. Coffin, whose name is subscribed to the acknowledgement of the annexed instrument, was at the time of taking such acknowledgement to-wit: March 8, 1897 an acting Notary Public within and for the County aforesaid, duly commissioned and qualified, and authorized by the laws of the State of Indiana, to take and certify the same, as well as to take and certify all affidavits, and the acknowledgement and proof of deeds or conveyances, and all other instruments of writing.

And further that I am well acquainted with the handwriting of said Charles E. Coffin and verily believe that the signature to said Certificate or Proof of Acknowledgement or Jurat is genuine, and that said instrument is executed and acknowledged according to the laws of the State of Indiana.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Court and County, at Indianapolis, Indiana, this 5th day of April A. D. 1897.

James W. Fesler, Clerk. (Seal.)

5-13935

STATE OF INDIANA,
County of Marion, ss:

I, Charles E. Coffin, a Notary Public in and for the City of Indianapolis, Marion County and State aforesaid, do

hereby certify that on the 8th day of March A. D. 1897, personally appeared before me Joseph Eastman, to me personally known to be the same person who executed the foregoing statement, and acknowledged that he had executed the same for the purposes therein set forth.

In witness whereof, I have hereunto set my hand and seal, the day and year above written.

Charles E. Coffin, Notary Public. (Seal.)

8-13935

American Medical Association

Certificate of Change in Its Articles of Association

STATE OF ILLINOIS,
County of Cook, ss:

We Hereby Certify, that at an Annual Meeting of the members of the American Medical Association, held at Saratoga Springs, in the State of New York, on the 13th day of June, 1902, the Articles of Incorporation or Association of said American Medical Association were amended in the following manner, (more than four-fifths of the members of said Association present and participating, voting in favor of said changes):

By amending Sections 1 and 2 thereof, by striking out all after said members 1 and 2 respectively, and inserting in lieu thereof the following:

"Constitution, or Articles of Incorporation

Article I.—Title of the Association, or Corporation.

The name and title of this organization shall be The American Medical Association.

Article II.—Object of the Association, or Corporation.

The object of this Association shall be to federate into one compact organization the medical profession of the United States, for the purpose of fostering the growth and diffusion of medical knowledge, of promoting friendly inter-

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course among American physicians, of safeguarding the material interests of the medical profession, of elevating the standard of medical education, of securing the enact-

ment and enforcement of medical laws, of enlightening and directing public opinion in regard to the broad problems of state medicine, and of representing to the world the practical accomplishments of scientific medicine, with power to acquire and hold property, publish Journals, etc.

Article III.—Composition of the Association, or Corporation.

Section 1. This Association shall consist of Members, Members by Invitation, Honorary Members, Associate Members and Delegates.

Sec. 2. Members.—Members shall consist of such members of the state societies, together with their affiliated local societies, entitled to representation in this Association as shall make application for admission, in writing to the Treasurer, and accompany said application with a certificate of good standing signed by the president and secretary of the society of which they are members, and the annual fee.

Sec. 3. Members by Invitation.—Members by Invitation shall consist of distinguished physicians of foreign countries who may be invited by the officers of Sections or of the Association. They shall hold their connection with this Association until the close of the annual session to which they are invited, and shall be entitled to participate in all of its affairs, as in the case of members, but they shall not be assessed the annual dues.

Sec. 4. Honorary Members.—Honorary Members shall by physicians of foreign countries who have risen to preeminence in the profession of medicine.

Sec. 5. Associate Members.—Representative teachers and students of the allied sciences, not physicians, may become Associate Members by the vote of the House of Delegates.

Sec. 6. Delegates.—Delegates shall consist of such members of the affiliated state and territorial medical societies and of the medical service of the United States Army, of the United States Navy, and of the United States Marine-Hospital Service as shall be chosen in accordance with the provisions of the Constitution, or Articles of Incorporation, and By-Laws of The American Medical Association.

Article IV.--House of Delegates

Section 1. —There shall be a House of Delegates which shall consist of (1) delegates elected by the permanently-organized state and territorial medical societies in affiliation with this Association; (2) delegates elected by each of the component scientific Sections of this Association; (3) one delegate each from the medical departments of the United States Army and United States Navy, and one from the United States Marine-Hospital Service.

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Sec. 2.—The total membership of the House of Delegates shall not exceed 150, and the delegates representing the affiliated state and territorial medical societies shall be apportioned among the several affiliated state and territorial medical organizations in direct ratio to their true membership.

Article V.—Sections

In order that its appropriate scientific work may be expeditiously and systematically performed this Association shall be divided into Sections, each of which shall be devoted to the encouragement and pursuit of knowledge in one of the recognized branches into which the science and art of medicine are for convenience divided. New Sections may be organized, or existing Sections discontinued, from time to time as necessity arises and when authorized by the House of Delegates.

Article VI.—Branches

The House of Delegates shall have authority to provide for and to create such branch organizations as may be deemed essential to the promotion of the welfare of the medical profession.

Article VII.—Sessions and Meetings.

The Association shall hold an Annual Session, during which there shall be held daily a General Meeting, which shall be open to all registered members and delegates. The place and time for holding each Annual Session shall be determined for each next succeeding year by the House of Delegates.

Article VIII.—Officers.

Section 1.—The officers of this Association shall be a President, four Vice-Presidents, a Secretary, a Treasurer, and nine Trustees.

Sec. 2.—The officers of this Association shall be elected by the House of Delegates.

Sec. 3.—Each officer, with the exception of the Trustee, shall hold office for one year, or until his successor is elected and installed. Three Trustees shall be elected annually by the House of Delegates for a term of three years.

Sec. 4.—No member of the House of Delegates shall be eligible to any of the offices mentioned in the foregoing sections of this article.

Article IX.—Funds and Appropriations.

Funds for meeting its current expenses and awards from year to year shall be raised by the Association, by an equal assessment of not more than ten dollars annually on each of the members; by voluntary contributions for specific

objects; and from the profits of its publications. Funds may be appropriated by the House of Delegates in accordance with the articles of incorporation for defraying the expenses of its annual meetings; for publication; for enabling standing committees to fulfill their respective duties, conduct their correspondence, and procure materials necessary for the completion of their stated annual reports; for the encouragement of scientific investigation by prizes and awards of merit; and for defraying the expenses incidental to specific investigation.

Article X.—Referendum.

Section 1.—The General Session shall have the right to discuss questions referred to it by the House of Delegates, and it may, by a two-thirds vote, order a general referendum on any question pending before the House of Delegates.

Sec. 2.—The House of Delegates shall, upon a two-thirds vote of its own members or upon a two-thirds vote of the General Meeting, submit any question, either through The

Journal or by mail, to the general membership for final vote; and if the persons voting shall comprise a majority of the members, the majority of such votes cast shall determine the question, and this vote shall be binding upon the House of Delegates.

Article XI.—Amendments.

The House of Delegates shall have authority to amend any article of this Constitution, or Articles of Incorporation, by a three-fourths vote of all the members composing the House of Delegates.

And Section 3 of said Articles of Incorporation was amended by striking out all after the figure 3, and inserting in lieu thereof the following:

"The Management of the aforesaid, The American Medical Association, shall be vested in a Board of Ten Trustees, of whom the President of the Association, from time to time, shall be ex officio one, to be elected as in these Articles of Incorporation, and the By-laws of said Association or Corporation directed."

AND WE FURTHER CERTIFY, that the said Annual Meeting of said Association, so held at Saratoga Springs, on the 10th, 11th, 12th, 13th days of June, 1902, was, upon motion, duly adjourned on the 13th day of June, 1902, to meet at 103 State Street, Chicago. Illinois, on the 16th day of June; that the adjourned session of the Annual Meeting of said American Medical Association was duly held at 103 State Street, Chicago, Illinois, pursuant to the said adjournment, and that at the said adjourned session of said Annual Meeting, so held in Chicago, Illinois, (more than a quorum being present), the previous action of the Meeting, in adopting the said Amendment to the Articles of Incorporation, above set forth, were approved by the unanimous vote of all the members present.

IN WITNESS WHEREOF, we have hereunto set our hands and affixed the Seal of said Corporation, this 20th day of June, A.D. 1902.

Frank Billings, President. George H. Simmons, Secretary.

(Corporate Seal.)

American Medical Association.

Certificate of Change in Its Articles of Association.

Box 759, No. 37,308.

Made in June, 1902.

Filed June 27, 1902.

James A. Rose, Sec'y of State.

American Medical Association

Certificate of Change in Its Articles of Incorporation.

STATE OF ILLINOIS,
County of Cook, ss.

I hereby certify that at the regular annual meeting of the American Medical Association, for the year 1904, legally called and held, the Articles of Incorporation of said American Medical Association, as amended by amendment filed with the Secretary of State, June 27, 1902, were amended in the following manner (more than three fourths of all the members composing the House of Delegates voting in favor of such changes):

I.

By striking out the title in such amendment "Constitution or Articles of Incorporation", and also by striking out of the said amendment, articles 1 to 11, both inclusive, and substituting in lieu thereof the following:

1. The name of such corporation is AMERICAN MEDICAL ASSOCIATION.

2. The object for which it is formed is to promote the science and art of medicine.

II.

By amending section 3 of the Articles of Incorporation, as amended, by striking out all after the figure 3, and inserting in lieu thereof the following:

The management of the aforesaid American Medical Association shall be vested in a Board of nine Trustees, who are to be selected as the by-laws direct.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said corporation, this 23rd day of September, A.D. 1904.

George H. Simmons, Secretary. (Seal.)

Change of Articles of American Medical Assn.

Box 759, No. 37308.

Filed Sept. 24, 1904.

James A. Rose, Sec'y of State.

Certified Copy of

State of Illinois,

Office of the Secretary of State

CONSTITUTION AND BY-LAWS OF THE AMERICAN MEDICAL ASSOCIATION, 1938

American Medical Association, 535 North Dearborn Street, Chicago

Constitution

Article 1.—Title and Definition

The name of this corporation is the American Medical Association; it is a federacy* of its constituent associations.

Article 2.—Objects

The objects of the Association are to promote the science and art of medicine and the betterment of public health.

Article 3.—Constituent Associations

Constituent associations are those state and territorial medical associations which are, or which may hereafter be, federated to form the American Medical Association, in accordance with this Constitution and By-Laws.

Article 4.—Component Societies

Component societies are those county or district medical societies contained within the territory of and charted by the respective constituent associations.

Article 5.—House of Delegates

Section 1. The legislative powers of the Association reside in the House of Delegates. The House of Delegates shall transact all business of the Asso-

*Federacy: A federation or union of several states under one central authority, consisting of delegates from each state in matters of general policy but self-governing in local matters. American Dictionary and Cyclopedia.

ciation not otherwise specifically provided for in this Constitution and By-Laws, and shall elect the general officers.

Sec. 2.—Composition.—The House of Delegates is composed of delegates elected by the constituent associations and by the Sections of the Scientific Assembly, and of delegates from the Medical Departments of the Army and the Navy and the Public Health Service, appointed by the Surgeon-General of the respective departments. The Trustees, the ex-Presidents of the Association and the members of the several Councils shall be ex officio members of the House of Delegates without the right to vote, provided that members of the Councils who are also elected delegates may exercise all of the rights of elected delegates.

Sec. 3.—The total voting membership of the House of Delegates shall not exceed 175. The Medical Department of the Army and of the Navy, the United States Public Health Service and the scientific sections shall each be entitled to one delegate, and the remainder shall be apportioned among the constituent associations in proportion to their actual active membership as hereinafter provided in the By-Laws. (As amended, 1925.)

Article 6.—General Officers

Section 1.—The general officers of the Association shall be a President, a President-Elect, a Vice President, a Secretary, a Treasurer, a Speaker and a Vice Speaker of the House of Delegates, and nine Trustees. (As amended, 1925.) Prior to June 14, 1938, this Section read: "These officers shall be elected annually and, except the Trustees, shall serve for one year or until their successors are elected and installed."

Sec. 2.—The President-Elect shall be elected annually. He shall serve as President-Elect until the annual session of the Association next ensuing after his election and shall become President on his installation in the course of that session, serving thereafter as President until the next following annual session and the installation of his successor. If the President-Elect dies, resigns or, in the judgment of the Board of Trustees confirmed by the House of Delegates, is permanently disqualified for the performance of the duties of his office by any just cause, the Vice President shall become President-Elect and in due course succeed to the presidency, with all of the prerogatives and duties pertaining to that office, as fully as if elected to it in the first instance: Provided, however, that the President-Elect who is elected at the annual session of the Association in 1937 shall, notwithstanding his election as such for the period of one year only, be installed as President in the course of the session in 1938 and continue as such until the session in 1939 and the installation of his successor.

A Vice President, a Secretary, a Treasurer, and a Speaker and a Vice Speaker of the House of Delegates shall be elected, each to serve for one year and until his successor is elected and installed: Provided, however, that in event of the death, resignation or removal, or of the permanent disability of the President-Elect as determined by the Board of Trustees, the Vice President shall succeed to the office of President-Elect and in due course to the office of President, notwithstanding the fact that he was in the first instance elected as Vice President for one year only. (As amended, 1938.)

Sec. 3.—Two Trustees shall be elected annually, except every fifth year, when but one shall be elected, each to serve for five years, or until his successor is elected and installed: Provided, that at the session of the House of Delegates at which this amendment is adopted, two Trustees shall be elected to serve three years and one to serve four years; that at the next annual session, one Trustee shall be elected to serve three years and two to serve four years;

and that at the next subsequent session two Trustees shall be elected to serve four years and one to serve five years. No Trustee shall serve for more than two consecutive terms, but a Trustee elected to serve an unexpired term shall not be regarded as having served a term unless he has served three or more years. (As amended, 1924.)

Article 7.—Trustees

The Board of Trustees shall have charge of the property and financial affairs of the Association and shall perform such duties as are prescribed by law governing directors of corporations.

Article 8.—Members and Fellows

Section 1.—Members of the American Medical Association.—Members in good standing of the constituent associations are the members of the American Medical Association, subject, however, to the provisions of these By-Laws regarding members.

Sec. 2.—Fellows of the Scientific Assembly.—Members in good standing of the Association, who have complied with the provisions of the By-Laws regarding Fellows, are Fellows of the Scientific Assembly of the American Medical Association.

Article 9.—Scientific Assembly

Section 1.—The Scientific Assembly of the American Medical Association is the convocation of its Fellows for the presentation and discussion of subjects pertaining to the science and art of medicine.

Sec. 2.—The Scientific Assembly is divided into sections, each section representing that branch of medicine described in its title.

Sec. 3.—New sections may be created or existing sections discontinued by the House of Delegates. The Scientific Assembly and its sections shall be conducted in accordance with the rules and regulations set forth in this Constitution and By-Laws.

Article 10.—Annual Sessions

The House of Delegates and the Scientific Assembly shall meet annually at times and places to be fixed by the House of Delegates. Places desiring to entertain the House of Delegates and the Scientific Assembly in annual session shall submit their invitations in writing, together with such data as may be required, to the Board of Trustees, not less than sixty days prior to the annual session at which the selection of the place of meeting is to be made. The Board of Trustees shall investigate or cause to be investigated all such places from which said invitations have been received, and shall make report to the House of Delegates, advising which, if any, of said places possess, or may be expected to furnish, the necessary facilities and conveniences for entertaining the Association and accommodating its various activities. The time and place of any of these sessions may, however, be changed by the unanimous action of the Board of Trustees at any time not less than sixty days prior to the time selected for that session. A session may be held at any place in the United States. (As amended, 1927.)

Article 11.—Funds

Funds may be raised by an equal assessment of not more than ten dollars annually on each of the members; from the Association's publications, and in any other manner approved by the Board of Trustees. Funds may be appro-

priated by the Board of Trustees to defray the expenses of the Association, to carry on its publications, to encourage scientific investigations and for any other purpose approved by the Board of Trustees.

Article 12.—Amendments

The House of Delegates may amend this Constitution at any annual session, provided the proposed amendment shall have been introduced at the preceding annual session, and provided two thirds of the voting members of the House of Delegates registered at the session at which action is taken vote in favor of such change or amendment. (As amended, 1928.)

By-Laws

Business and Legislation

Chapter I.—Qualifications, Term, Apportionment and Registration of Delegates

Section 1. Delegates Must Have Been Fellows of the American Medical Association Two Years.—A member of the House of Delegates must have been a member of the American Medical Association and a Fellow of the Scientific Assembly for at least two years next preceding the session of the House of Delegates at which he is to serve.

Sec. 2. Term.—Delegates and alternates from constituent associations shall be elected for two years. Constituent associations entitled to more than one representative shall elect them so that one half, as near as may be, shall be elected each year. Delegates and alternates elected by the sections, or delegates appointed from the United States Army, United States Navy and United States Public Health Service shall hold office for two years. (As amended, 1923.)

Sec. 3. Apportionment of Delegates.—At the annual session of 1925, and every third year thereafter, the House of Delegates shall appoint a committee of five on reapportionment, of which the Speaker and the Secretary shall be members. The committee shall apportion the delegates among the constituent associations in accordance with Article 5, Section 3, of the Constitution, and in proportion to the membership of each constituent association as recorded in the office of the Secretary of the American Medical Association on April 1 of the year in which the apportionment is made. This apportionment shall take effect at the next succeeding annual session, and shall prevail until the next triennial apportionment, whether the membership of the constituent association shall increase or decrease. (As amended, 1925.)

Sec. 4. Registration of Delegates.—Each delegate representing a constituent association, before being seated, shall deposit with the committee on credentials a certificate signed by the secretary and under the seal of the constituent association stating that he has been regularly elected a delegate by that constituent association. Each delegate from a section shall present similar credentials signed by the chairman and the secretary of the section which he represents. Each delegate from a government service shall present credentials stating he has been duly appointed by the Surgeon-General of the department which he represents.

Sec. 5. A Delegate, Once Seated, to Retain His Seat for the Entire Session.—A delegate whose credentials have been accepted by the committee on credentials and whose name has been placed on the roll of the House, shall remain a delegate of the body which he represents until final adjournment of the session and his place shall not be taken by any other delegate or alternate.

Chapter II. Procedure of House of Delegates

Section 1. Order of Business.—The following shall be the order of business, unless otherwise ordered:

1. Call to order by the Speaker.
2. Roll call.
3. Reading and adopting the minutes.
4. Reports of officers.
5. Reports of committees.
6. Unfinished business.
7. New business.

Sec. 2. During the annual presentation of the report of each Council or Bureau the privileges of the floor of the House of Delegates, for a period of five minutes, shall be extended to each Council secretary and Bureau head. (As amended, 1924.)

Sec. 3. Limit of Time for Introduction of New Business.—Unanimous consent shall be required for the introduction of new business at the last meeting of the annual session of the House of Delegates, except when presented by the Board of Trustees, the officers of the sections, or the sections. All new business so presented shall require three fourths affirmative vote for adoption.

Sec 4. Rules of Order.—The House of Delegates shall be governed by Robert's Rules of Order when not in conflict with these By-Laws or with the rules of the House.

Sec. 5. Quorum.—Fifty of the voting members of the House of Delegates shall constitute a quorum. (As amended, 1928.)

Chapter III.—Meetings of the House of Delegates

Section 1. Regular Sessions.—The House of Delegates shall meet annually on the Monday preceding the opening of, and at the same place as, the Scientific Assembly of the Association.

Sec. 2. Special Sessions.—Special sessions of the House of Delegates shall be called by the Speaker on written request of twenty-five or more delegates representing one third or more of the constituent associations, or on request of a majority of the Board of Trustees. When a special session is thus called, the Secretary shall mail a notice to the last known address of each member of the last House of Delegates at least twenty days before such special session is to be held, in which notice shall be specified the time and place of meeting and the items of business to be considered. No other business shall be transacted at the special session than that specified in the call.

Chapter IV.—Nomination and Election of Officers and Affiliate, Associate and Honorary Fellows, and Installation of Officers

Section 1. Nominations.—Nominations for office shall be made orally, but a nominating speech must not exceed two minutes. The Treasurer shall be nominated by the Board of Trustees. No member of the House of Delegates nor general officer of the Association shall be eligible for election to the office of President-Elect or Vice President. (As amended, 1937.)

Sec. 2. Qualifications of General Officers.—The General Officers must have been members of the Association and Fellows of the Scientific Assembly for at least two years next preceding their election. The Speaker and Vice Speaker

of the House may but need not be elected from among the members of the House.

Sec. 3. Method of Holding Elections.—All elections shall be by ballot, and a majority of the votes cast shall be necessary to elect. In case no nominee receives a majority of the votes on the first ballot, the nominee receiving the lowest number of votes shall be dropped and a new ballot taken. This procedure shall be continued until one of the nominees receives a majority of all the votes cast, when he shall be declared elected. However, when there is only one nominee for an office, a majority vote without ballot shall elect.

Sec. 4. Time of Election.—The election of officers shall be the order of business of the House of Delegates immediately following the final supplementary reports of the Board of Trustees and Committees on the afternoon of the fourth day of the annual session of the House of Delegates (Thursday): Provided, however, that the House of Delegates may change the time of election by action taken at least one day in advance of that to which the election is to be changed, and provided further that the motion to change the time of election shall be supported by two thirds of the delegates registered.

The election of Affiliate, Associate and Honorary Fellows shall immediately follow the election of officers. Not more than three Honorary Fellows shall be elected at any annual session except on special recommendation of the Council on Scientific Assembly and the unanimous vote of the House. (As amended, 1927.)

Sec. 5. Associate Fellows.—Applications for Associate Fellowship from foreign physicians and from American physicians engaged in missionary and similar labors in foreign countries must be approved by the Judicial Council; applications from dentists must be approved by the Section on Laryngology, Otology and Rhinology, from pharmacists by the Section on Pharmacology and Therapeutics, and from representative teachers and students of science allied to medicine by the officers of a section.

Sec. 6. Affiliate and Honorary Fellows.—Nominations for Affiliate Fellowship shall be made by the constituent association of which the nominee is a member, and nominations for Honorary Fellowship shall be made by the sections, and must be submitted to the House of Delegates not later than the second day of the Scientific Assembly. These nominations shall be referred without debate to the Council on Scientific Assembly, which shall consider the scientific attainments and professional character of the applicants and report to the House of Delegates.

Sec. 7. Installation.—The general officers of the Association, except the President, shall assume their duties at the close of the last meeting of the annual session at which they are elected.

Sec. 8. Installation of the President.—The President-Elect shall be installed as and assume the duties of President at the opening general meeting of the Scientific Assembly of the annual session following that at which he was elected. (As amended, 1937.)

Chapter V.—Duties of Officers

Section 1. President.—The President shall preside at the general meetings of the Scientific Assembly. At the opening general meeting of the Scientific Assembly next following his election he shall deliver an address on such matters as he may deem of importance to the public and to the medical profession. He may attend the meetings of and make suggestions to the House of Delegates or the Board of Trustees. With the approval of the Board of Trustees he is authorized to appoint committees (a) requested by the Councils, and (b) for emergencies and purposes not otherwise provided for. He shall nominate mem-

bers of standing committees for election by the House of Delegates. (As amended, 1937.)

Sec. 2. Vice President.—The Vice President shall officiate for the President during the latter's absence, or at his request. In case of death, resignation or removal of the President, the Vice President shall officiate during the unexpired term.

Sec. 3. Speaker.—The Speaker shall preside at the meetings of the House of Delegates and shall perform such duties as custom and parliamentary usage require. He shall have the right to vote only when his vote shall be the deciding vote.

Sec. 4. Vice Speaker.—The Vice Speaker shall officiate for the Speaker in the latter's absence or at his request. In case of death, resignation, or removal of the Speaker, the Vice Speaker shall officiate during the unexpired term.

Sec. 5. Secretary.—The Secretary, in addition to the duties ordinarily devolving on the secretary of a corporation and those delegated in other sections of these By-Laws, shall give due notice of the time and place of annual and special sessions of the House of Delegates and of the Scientific Assembly in The Journal of the American Medical Association. He shall send an official notice of each annual or special session to the secretary of each constituent association and to the secretary of each section. He shall keep the minutes of the House of Delegates. He shall notify members of committees of their appointment and of the duties assigned them. He shall verify the credentials of the members of the House of Delegates and shall provide a registration book in which shall be recorded the name of each delegate in attendance at each session, together with that of the constituent association, government service or section which he represents. He shall prepare for publication the official programs for the Scientific Assembly, and shall perform such other duties as may be directed by the House of Delegates, or the Board of Trustees.

Sec. 6. Treasurer.—The Treasurer shall be the custodian of all moneys, securities and deeds belonging to the Association which may come into his possession, and shall hold the same subject to the direction and disposition of the Board of Trustees: Provided, however, that the Board of Trustees may select a bank or trust company to act as custodian, in place of the Treasurer, of all or any part of the investments and securities owned by the Association, and to act as the agent of the Association in collecting the income therefrom. The Board of Trustees may, from time to time, change such custodian as it may deem best for the interest of the Association. The Treasurer shall give to the Board of Trustees a suitable bond for the faithful performance of his trust, and shall receive for his service a salary to be fixed by the Board of Trustees. (As amended, 1931.)

Sec. 7. Officers to Complete Business of Session.—All business of each annual session shall be completed by the officers (including section officers) who have served during the session.

Chapter VI.—Board of Trustees

Section 1. Board of Trustees.—The Trustees at their first meeting after the annual session of the House of Delegates, shall organize by electing a chairman, a secretary, and an executive committee of three members. It shall be the duty of this Board to provide for and to superintend the publication of The Journal of the American Medical Association, and of all proceedings, transactions and memoirs of the Association. It shall have full discretionary power to omit from The Journal, in part or in whole, any paper that may be referred to it by any of the sections. It shall appoint a general manager

and an editor of The Journal, which two positions may be held by one person, and such assistants as may be necessary, and shall determine their salaries and the terms and conditions of their employment. All resolutions or recommendations of the House of Delegates pertaining to the expenditure of money must be approved by the Board of Trustees before the same shall become effective. During the annual session of the Association the Board shall hold meetings as often as may be deemed necessary by the chairman, and all matters referred to it by the House of Delegates shall be reported on within twenty-four hours, if so requested by the House. The Board of Trustees shall have the accounts of the Treasurer and of The Journal office audited annually or oftener, if deemed necessary, and shall make an annual report to the House of Delegates, which report among other items shall specify the character and cost of all the publications of the Association during the year and the amount of all property belonging to the Association. Should a vacancy occur, on account of death or otherwise, among the general officers of the Association, the Board of Trustees may fill such vacancy until the next annual session of the House, unless otherwise provided for in this Constitution and By-Laws. The Board of Trustees shall fix the salary of the Secretary and of the Treasurer. Regular meetings of the Board shall be held immediately after the annual session of the House of Delegates, and on the third Friday in the month of February of each year. Special meetings of the Board may be called at any time by the chairman, or by five members of the Board, by mailing a written or printed notice to the last known address of each trustee, at least five days before such meeting is to be held; in which notice shall be specified, in general terms, the object of such special meeting, and no other business shall be transacted thereat: Provided, that the proceedings of any meeting of the Board at which all the members are present or which are approved in writing by every member of the Board shall be valid without previous notice having been given. Five members of the Board shall constitute a quorum. During the intervals between the sessions of the House of Delegates the Board of Trustees shall supervise the action of committees constituted by the action of the House and may appoint emergency committees. (As amended, 1925.)

The President, the President-Elect and the Speaker of the House of Delegates shall be ex officio members of the Board of Trustees, but without the right to vote. (As amended, 1923.)

An amendment of June 14, 1938, substituted "Bureau of Health Education" for "Bureau of Health and Public Instruction."

Sec. 2. To Establish *Bureau of Health Education*.—The Board of Trustees shall establish a bureau, to be known as the *Bureau of Health Education*, to carry on such activities in the field of health and the dissemination of information in relation thereto as the House of Delegates may direct or the Board of Trustees, in the absence of such directions, may determine. (As adopted, 1923, and amended, 1938.)

Sec. 3. To Publish a Journal for the Laity.—The Board of Trustees shall publish a journal for the dissemination among the laity of information concerning health and matters of popular interest concerning medical matters, the editorial policies of which shall be determined by said Board, with the cooperation of an editorial advisory committee, consisting of five members, appointed by said Board from among the Fellows of the Association. (As adopted, 1923.)

Sec. 4. Trustees to Control Session.—The Board of Trustees shall have full control of all arrangements for the annual sessions and shall provide meeting places for the House of Delegates, the general meetings and the scientific sections. It shall also have control of all exhibits. It may appoint a local committee on arrangements, which shall be at all times under the Board.

Sec. 5. To Establish a Distinguished Service Award of the American Medical Association.—The Board of Trustees shall create and establish an award to be known as the Distinguished Service Award of the American Medical Association, which shall consist of a medal and a citation.

One Fellow of the Association shall be eligible to receive the award each year and shall be selected in a manner prescribed in these By-Laws.

The Board of Trustees shall consider the merits of nominees for the award recommended by the Committee on Distinguished Service Awards and shall select from the list not more than three Fellows to be balloted on by the House of Delegates. The Board of Trustees shall submit the list of nominees so selected to the House of Delegates for consideration, together with a brief statement of the findings of the Committee on Awards with respect to each nominee.

The House of Delegates shall select the recipient of the award from the list of nominees submitted by the Board of Trustees. The selection shall be by ballot, in the same manner as officers are elected. The vote shall be taken immediately after the nominees are placed before the House by the Board of Trustees.

The Board of Trustees is charged with the duty of having a suitable medal and citation prepared each year and is further charged with the duty of fixing the time and method of presentation. (As adopted, 1937.)

Chapter VII.—Committees

Section 1. Classification of Committees.—Committees shall be classified as (a) Standing Committees, (b) Reference Committees, and (c) Special Committees. The standing committees shall be nominated by the President and elected by the House of Delegates, unless otherwise provided for. Reference and special committees shall be appointed by the Speaker as provided in these By-Laws. Special committees may be created by the House of Delegates to perform the special functions for which they are created; they shall be appointed by the Speaker unless otherwise ordered by the House. Committees acting during the interval between the sessions of the House of Delegates shall be subject to the Board of Trustees. In case of vacancies in committees occurring during the interval between annual sessions, the President or the Speaker, according to the committee on which said vacancies occur, shall have the power to appoint Fellows to fill the vacancies until the next annual session.

The Speaker of the House of Delegates may appoint from the members of the House such additional committees as he may deem expedient in advance of the annual meeting to expedite the business of the House of Delegates. All such committees shall be subject to the approval of the House of Delegates. (As amended, 1923.)

Sec. 2. Membership of Committees.—Any Fellow shall be eligible to serve on standing or special committees. Reference committees shall be appointed from the members of the House of Delegates. Member of committees not members of the House of Delegates shall have the right to present their reports in person to the House and to participate in the debate thereon, but shall not have the right to vote. (As amended, 1924.)

Sec. 3. Standing Committees.—Standing committees shall be the following:

(a) Judicial Council.
(b) Council on Medical Education and Hospitals.
(c) Council on Scientific Assembly. (As amended, 1923.)

Chapter VIII.—Organization of Standing Committees or Councils

Section 1. Membership.—The Standing Committees, or Councils, including the Judicial Council and the Council on Scientific Assembly, shall consist of

five members, each elected for five years. The Council on Medical Education and Hospitals shall consist of seven members each elected for seven years. The term of office of the members of each committee shall terminate in succession, one each year, and the House of Delegates shall elect annually, on nomination by the President, one member to each committee to fill the vacancy, except that in 1925, three members of the Council on Medical Education and Hospitals shall be elected by the House of Delegates. The members of the Council on Scientific Assembly shall be chosen, as far as practical, from ex-section officers representing different sections. The President-Elect, the Secretary of the Association and the Editor of The Journal shall be ex officio members of this Council. (As amended, 1925.)

Sec. 2. Officers.—The Councils shall organize and elect their own officers except that the Secretary of the Association shall be the Secretary of the Judicial Council and of the Council on Scientific Assembly, and that on nomination by that Council, the Board of Trustees shall elect annually, to serve one year, a secretary of the Council on Medical Education and Hospitals, and shall fix his salary. (As amended, 1923.)

Sec. 3. Expenditures.—Each Council shall submit to the Board of Trustees a budget of its expenses for the fiscal year, and the Board shall make such appropriation for each Council as it may see fit. Each Council shall be limited in its expenditures to the appropriation made for it by the Board of Trustees and no Council shall expend or contract to expend any money in excess of its appropriation without the consent and approval in writing of the Board of Trustees.

Sec. 4. Rules and Regulations.—Each Council may make its own rules to govern its action; such rules shall not conflict with these By-Laws nor with standing rules or resolutions of the House of Delegates.

Sec. 5. Committees. Each Council shall have authority to appoint committees subject to the approval of the Board of Trustees for any purpose within the jurisdiction of the Council.

Sec. 6. Headquarters.—The headquarters of each Council shall be at the general office of the Association where the transactions of the Council shall be recorded.

Sec. 7. Reports.—Each Council shall submit annually a report of its work to the House of Delegates. All such reports, so far as possible, shall be transmitted thirty days before the annual session to the Secretary of the Association, who shall have them printed for distribution to the members of the House of Delegates.

Chapter IX.—Duties of Standing Committees or Councils

Section 1. The Judicial Council.—The judicial power of the Association shall be vested in the Judicial Council, whose decision shall be final. This power shall extend to and include (1) all questions involving Fellowship in the Scientific Assembly or the obligations, rights and privileges of Fellowship; (2) all controversies arising under this Constitution and By-Laws and under the Principles of Medical Ethics, to which the American Medical Association is a party; and (3) controversies (a) between two or more recognized constituent associations, (b) between a constituent association and a component society or societies of another constituent association or associations or a member or members of another constituent association or other constituent associations, and (c) between members of different constituent associations. In all these cases the Judicial Council shall have original jurisdiction. (As amended, 1937.)

In all cases which arise (a) between a constituent association and one or

more of its component societies; (b) between component societies of the same constituent association; (c) between a member or members and the component society to which said member or members belong, or (d) between members of different component societies of the same constituent association, the Judicial Council shall have appellate jurisdiction in questions of law and procedure but not of fact. The period of time within which appeal to the Judicial Council may be taken shall be limited to the six months following the date of decision by the constituted authority of a constituent association. (As amended, 1937.)

The Judicial Council shall have jurisdiction on all questions of ethics and in the interpretation of the laws of the organization.

The Judicial Council may, at its discretion, investigate general professional conditions and all matters pertaining to the relations of physicians to one another and to the public, and may make such recommendations to the House of Delegates or the constituent associations as it deems necessary.

The Judicial Council shall have authority in its discretion from time to time to request the President to appoint investigating juries to which it may refer complaints or evidence of unethical conduct which in its judgment is of greater than local concern. Such investigating juries, if probable cause for action be shown, shall report with formal charges to the President, who, under Chapter V, Section 1, of the By-Laws, shall appoint a Prosecutor, who, in the name and on behalf of the American Medical Association, shall prosecute the charges against the accused before the Judicial Council. The Council shall have the power to acquit, admonish, suspend or expel the accused. (As adopted, 1937.)

Sec. 2. Council on Medical Education and Hospitals.—The functions of the Council on Medical Education and Hospitals shall be (1) to investigate conditions of medical education, hospitals and associated subjects and to suggest means and methods by which the same may be improved; (2) to endeavor to further the realization of such suggestions as may be approved by the House of Delegates.

Sec. 3. Council on Scientific Assembly.—The functions of the Council on Scientific Assembly shall be: (1) to secure cooperation between the sections; (2) to pass on questions of policy in relation to scientific work and to investigate and report on scientific questions, either on its own initiative or when such questions are referred to it by the House of Delegates; (3) to stimulate the development of the sections; (4) to consider at first hand applications for new sections, or for changes in existing sections, and to report to the House of Delegates; (5) to appoint officers for meetings making up the section on miscellaneous topics and for the first session of a newly established section; (6) to arrange the programs for the general meetings of the Scientific Assembly [and with the cooperation of the section officers to combine section programs and to arrange such other changes as may seem advisable]. (As amended, 1925, 1938.) Clause in brackets, added June 14, 1938.

Chapter X.—Reference Committees

Section 1. Appointment.—Immediately after the organization of the House of Delegates at each annual session the Speaker of the House of Delegates shall appoint from the members of the House such committees as may be deemed expedient by the House of Delegates. Each committee shall consist of five members, unless otherwise provided, the chairman to be specified by the Speaker. These committees shall serve during the session at which they are appointed.

Sec. 2. References.—Resolutions, measures and propositions presented to the House of Delegates shall be referred to the appropriate committee which

committee shall report to the House before final action shall be taken, unless otherwise unanimously ordered by the House of Delegates.

Sec. 3. Organization.—Each Reference Committee shall, as soon as possible after the adjournment of each meeting, or during the meeting, if necessary, take up and consider such business as may have been referred to it, and shall report on the same at the next meeting or when called on to do so. Three members shall constitute a quorum.

Sec. 4. Committees.—The following committees are hereby provided:

(1) A Committee on Sections and Section Work, to which shall be referred all matters relating to the sections and the section work. (The members of the Council on Scientific Assembly shall be members, ex officio, of this committee.)

(2) A Committee on Rules and Order of Business, to which shall be referred all matters regarding rules governing the action, methods of procedure and order of business of the House of Delegates.

(3) A Committee on Medical Education, to which shall be referred all matters relating to medical colleges and medical education. (The members of the Council on Medical Education and Hospitals shall be members, ex officio, of this committee.)

(4) A Committee on Legislation and Public Relations, to which shall be referred all matters relating to state and national legislation, memorials to legislatures, to the United States Congress, or to the President of the United States. The Director of the Bureau of Legal Medicine and Legislation shall be ex officio a member of this committee. (As amended, 1923, 1929.)

(5) A Committee on Hygiene and Public Health, to which shall be referred all matters relating to hygiene and public health.

(6) A Committee on Amendments to the Constitution and By-Laws, to which shall be referred all proposed amendments to the Constitution and By-Laws. (The members of the Judicial Council shall be members, ex officio, of this committee.)

(7) A Committee on Reports of Officers, to which shall be referred addresses of the President and of the Speaker of the House of Delegates and the reports of the Secretary and of the Board of Trustees.

(8) A Committee on Credentials, to which shall be referred all questions regarding the registration and the credentials of delegates.

(9) A Committee on Miscellaneous Business, to which shall be referred all business not otherwise disposed of.

Chapter XI.—Committee on Distinguished Service Awards

Section 1. There is hereby created a special committee to be known as the "Committee on Distinguished Service Awards of the American Medical Association."

This committee shall consist of five members, who shall serve for a period of three years, except the first committee, two of which shall be appointed for three years, two for two years and one for one year.

Nomination for the award may be made by any Fellow of the Association, provided it is made in a manner prescribed by the committee and not less than two months in advance of the next regular annual session of the Association. (As adopted, 1937.)

Sec. 2. Duties and Powers of the Committee on Awards.—The Committee on Awards shall make its own rules of procedure, not in conflict with the By-Laws, with respect to the performance of its duties, subject to the approval of the Board of Trustees.

It shall consider the eligibility of nominees for the Distinguished Service Award of the American Medical Association on the basis of meritorious services in the science and art of medicine and shall submit its findings and recommendations to the Board of Trustees annually within a time limit fixed by the Board of Trustees.

In the event that more than five nominations are received, the committee shall elect therefrom a list of not more than five to be submitted to the Board of Trustees, together with a brief statement of its findings with reference to each. (As adopted, 1937.)

Scientific Assembly

Membership and Fellowship

Chapter XII.—Membership and Fellowship

Section 1. Tenure of Membership.—Membership in this Association shall continue only so long as the individual is a member of a component society of the constituent association through which he holds membership. When the Secretary shall be officially informed by the secretary of the constituent associations through which a member holds membership in this Association that the member is not in good standing, the Secretary shall remove the name of said member from the membership roll of the American Medical Association. A member of a constituent association who removes to and engages in the practice of medicine at a location in another state in which there is a constituent association shall forfeit his membership in this Association, and the Secretary shall remove his name from the roster of members of the American Medical Association, unless within one year after such change of residence he becomes a member of the constituent association in the state to which he has moved: Provided, that when the member is also a Fellow of the Scientific Assembly the By-Laws defining the effect on Fellowship of removal to another state shall have precedence over this section. (As amended, 1935.)

Sec. 2. Fellows.—Any member of this Association holding a degree equal in requirement to that of M.D., granted by a school of medicine recognized by the American Medical Association entitling the holder to apply to a state board of medical examination and registration for license to practice medicine, and who on the prescribed form shall apply for Fellowship and subscribe for The Journal, paying the annual Fellowship dues for the current year, shall be inducted into the Association as a Fellow unless the application is disapproved by the Judicial Council. In exceptional cases a member holding a degree equal in requirement to that of M.D., but not graduated at a recognized school, who formerly was a Fellow or who has established a high standard of professional attainment, may be admitted as a Fellow by the Judicial Council if in its judgment such action is desirable. (As amended, 1930, 1934.)

Commissioned medical officers of the United States Army, United States Navy and the United States Public Health Service shall be Fellows of this Association so long as they are engaged actively in their respective service, and thereafter if they have been retired on account of age or physical disability, or, after long and honorable service, under the provisions of an Act of Congress. These Fellows shall not be required to pay Fellowship dues and shall not receive The Journal of the American Medical Association except by personal subscription. (As amended, 1924.)

Sec. 3. Effect on Fellowship or Removal to Another State.—A Fellow who changes the location at which he practices medicine, from the state through whose constituent association he holds membership in the American Medical Association to another state in which there is a constituent association, is eligible to membership in the component society of his new location on the presentation of a transfer card and an official statement that his dues have been paid in full in the society in which he holds membership, provided that no evidence which would otherwise disqualify him for membership arise. He shall forfeit his Fellowship in the American Medical Association one year after such change of location, unless he becomes a member of the constituent association of the state to which he has moved: Provided, however, that if the component society into whose territory such Fellow has moved shall refuse him membership, the Fellow shall be privileged to appeal to the Judicial Council of this Association to determine whether or not he be guilty of any act that warrants the enforcement of the provisions of this section. Pending the decision of such appeal he shall retain his Fellowship in the American Medical Association through his original state association. A member of a constituent state association who is located for the purpose of practicing medicine in a state adjacent to that through the association of which he holds Fellowship in the American Medical Association may become and may be continued a Fellow of the American Medical Association, provided the council of the constituent association of the state in which he is practicing medicine waives jurisdiction over his membership.

Sec. 4. Affiliate, Associate and Honorary Fellows.—There shall be Affiliate, Associate and Honorary Fellows, who shall be elected and shall qualify in accordance with the provisions set forth in these By-Laws.

Sec. 5. Affiliate Fellows.—A Fellow who has been a Fellow for a continuous term of fifteen (15) years, who is not less than sixty-five (65) years of age, and who is an honorary member of his component society and of his constituent association, or is connected with these organizations in an equivalent manner whereby he is relieved from the payment of dues or fees, on request of his constituent association, may be made an Affiliate Fellow by a majority vote of the House of Delegates of this Association. Affiliate Fellows shall be privileged to participate in the Scientific Assembly of the Association; they shall not be required to pay Fellowship dues and shall not receive The Journal of the American Medical Association except by person subscription. Affiliate Fellowship shall be conditioned on such an Affiliate Fellow continuing the relationship with his constituent association herein defined.

Sec. 6. Associate Fellows.—The following may be elected in accordance with Section 5, Chapter IV, to Associate Fellowship: Physicians who are members of the chartered national medical societies of foreign countries adjacent to the United States; American physicians located in foreign countries and engaged in medical missionary and similar educational and philanthropic labors; dentists holding the degree of D.D.S. who are members of state or local dental societies; pharmacists who are active members of the American Pharmaceutical Association, and representative teachers and students of science allied to medicine, resident in the United States and not eligible to regular membership. Associate Fellows shall enjoy the same privileges as regular Fellows, and shall be subject to the same conditions.

Sec. 7. Honorary Fellows.—Physicians of foreign countries may be elected Honorary Fellows by the House of Delegates in accordance with Section 6, Chapter IV.

Sec. 8. Invited Guests.—Scientists resident in the United States who are not engaged in the practice of medicine, and eminent physicians and scientists from foreign countries, may be invited by the general officers or by the

officers of a section, to attend an annual session of the Scientific Assembly and participate in the scientific work and social functions. They shall be designated as Invited Guests.

Sec. 9. Tenure of Fellowship.—Fellowship in this Association shall continue only so long as the individual is a member. When the Secretary shall be officially informed that the Fellow is not a member, the Secretary shall remove the name of such Fellow from the Fellowship roll of the American Medical Association and shall notify the Fellow of the action taken, together with the reason therefor. Fellowship shall be further conditioned on a Fellow conducting himself in accordance with this Constitution and By-Laws and the Principles of Medical Ethics of this Association.

Sec. 10. Delinquency.—Any Fellow who, for one year, has failed to pay his annual Fellowship dues, shall forfeit his Fellowship thirty days after notice of his delinquency has been mailed to his last known address by the Secretary.

Sec. 11. Fellowship Restored.—Any former Fellow who complies with Section 2, Chapter XII, shall be reinstated on payment of his indebtedness, including his subscription for the current calendar year.

Sec. 12. Infractions of Constitution, By-Laws or Principles of Medical Ethics. —The House of Delegates shall have the power to discipline or expel a member of the American Medical Association on recommendation of the Judicial Council. (As amended, 1930.)

Chapter XIII.—Registration

Fellows, Affiliate, Associate and Honorary Fellows and Invited Guests only shall be allowed to register or to take part in the work of any of the sections of the Scientific Assembly of the Association.

A Fellow shall be eligible to register at an annual session only after he has paid all of his current indebtedness.

A Fellow shall not be permitted to take part in the proceedings of the Association or of any of the sections until he has registered his name and address in the registration office.

A Fellow on registering shall designate the section in which he wishes to be enrolled, but shall be enrolled in one section only at any Scientific Assembly.

Chapter XIV.—General Meetings

Section 1. General Meetings.—General meetings of the Scientific Assembly may be arranged by the Council on Scientific Assembly with the approval of the Board of Trustees.

Sec. 2. The Opening General Meeting.—The opening general meeting shall be held on the evening of Tuesday of the week of the annual session, and shall be presided over by the President or, in his absence or at his request, by the Vice President.

Sec. 3. President's Address.—The President, immediately after he is inducted into office, shall deliver an address before the opening general meeting, and his recommendations, if he makes any, shall go to the House of Delegates for action.

Chapter XV.—Sections

Section 1. Title of Sections of Scientific Assembly.—The Scientific Assembly of the American Medical Association shall be divided into the following sections:

1. Practice of Medicine.
2. Surgery, General and Abdominal.

3. Obstetrics and Gynecology.
4. Ophthalmology.
5. Laryngology, Otology and Rhinology.
6. Pediatrics.
7. Pharmacology and Therapeutics.
8. Pathology and Physiology.
9. Nervous and Mental Diseases.
10. Dermatology and Syphilology.
11. Preventive and Industrial Medicine and Public health.
12. Urology.
13. Orthopedic Surgery.
14. Gastro-Enterology and Proctology.
15. Radiology.
16. Miscellaneous Topics. (As amended, 1932, 1937.)

Sec. 2. Officers of Sections.—The officers of each section shall consist of a chairman, a vice chairman and a secretary, and of such other officers as the section shall deem advisable. These shall serve for one year, or until their successors are elected and qualified: Provided, that each section may elect its secretary to serve a longer time at its discretion. If any vacancy occurs in the office of chairman, vice chairman or secretary of a section, such vacancy shall be filled by the election by the executive committee of such section of a Fellow who shall serve in the office indicated until the next annual session. Each section shall also elect biennially one delegate and one alternate to the House of Delegates of the American Medical Association to serve for two years. (As amended, 1925.)

Sec. 3. Election of Officers.—The election of officers of the several sections shall be the first order of business of the final meeting of the section at each Scientific Assembly. To participate in the election of any section a Fellow must have indicated on registering that he desires to affiliate with such section, and must have recorded his name and address on the section register book.

Sec. 4. Duties of Section Officers.—(a) Chairman.—The chairman shall preside at the meetings of the section and shall perform such duties as usually belong to such an office, or as may be provided by the by-laws of the section. He shall cooperate with the secretary in arranging the program, and shall see that proper arrangements are made for his section at the Scientific Assembly.

(b) Vice Chairman.—The vice chairman shall assist the chairman in the performance of his duties and shall preside in his absence, or at his request.

(c) Secretary.—The secretary shall keep a record of the proceedings of the section in a book provided for such purpose; shall, with the cooperation of the chairman, and in accordance with rules and regulations enacted by the House of Delegates, arrange the program; shall at least thirty days before the Scientific Assembly, forward it to the Secretary of the Association for insertion in the official program, and shall perform such other duties pertaining to his office as may be provided by the by-laws of the Association or of the section.

Sec. 5. Executive Committee.—Each section shall have an executive committee, which shall consist of the chairman and the last two retiring chairmen. In case of absence of a member of the executive committee of a section from a Scientific Assembly, the vacancy shall be filled by the chairman of the section. This committee shall examine and pass on all papers read before the section, and shall endorse for publication only those that are of scientific or of practical value, and which will reflect credit on the section before which they were read. It shall act as the nominating committee of the section.

Sec. 6. Meetings.—Sections shall hold meetings at 9 a. m. and 2 p. m. daily in accordance with the program for the Scientific Assembly, as arranged by the Council on Scientific Assembly.

Sec. 7. Who May Take Part in Section Work.—Fellows and Associate Fellows only shall have the right to participate in the business deliberations of a section. Fellows, Affiliate, Associate and Honorary Fellows, and Invited Guests may present papers and take part in the scientific discussions.

Sec. 8. Associate Fellows.—The officers of a section may nominate for Associate Fellowship representative teachers and students of sciences allied to medicine, resident in the United States, not eligible to regular membership. The secretary shall immediately notify the Secretary of the Association of such nominations.

Sec. 9. Honorary Fellows.—Each section at each Scientific Assembly may nominate for Honorary Fellowship in the American Medical Association a physician of a foreign country who has risen to preeminence in the profession of medicine: Provided, however, that nominations for Honorary Fellowship in the American Medical Association shall be acted on by the sections on or before the second day of each Scientific Assembly. The secretary of the section shall immediately notify the Secretary of the Association of such nomination.

Sec. 10. Time at Which Titles Must Be In.—Titles of papers to be presented to the section must be in the hands of the secretary of the section at least thirty-five days before the first day of the Scientific Assembly. With the title, the writer shall submit an abstract of the paper not less than thirty or more than one hundred and fifty words in length and an estimate of the time required to read his paper.

Sec. 11. Length of Papers and Discussions.—The time allowed for the presentation of a paper before a section shall be limited to fifteen minutes. No one shall discuss any paper more than once, nor for longer than five minutes except with the unanimous consent of those present. A section, by the unanimous consent of its officers and with the approval of the Council on Scientific Assembly, may arrange for one paper each annual session which will not be subject to restrictions, as to time or length, affecting other section papers. (As amended, 1928.)

Sec. 12. Number of Papers on Program.—The number of papers, including addresses, on the program of any section shall not exceed twenty-five.

Sec. 13. Can Present Only One Paper at an Annual Session.—A Fellow shall present no more than one paper at any Scientific Assembly.

Sec. 14. Failure to Keep Engagements.—Any Fellow accepting an assignment on a section program and without valid reason failing to be present to read his paper at the time designated shall be debarred from a place on any section program for a period of two years after the session at which he failed to keep his engagement. (As adopted, 1925.)

Sec. 15. Section to Provide By-Laws.—Each section may make by-laws for its own government, provided that they shall in no way conflict with the Constitution and By-Laws of the American Medical Association.

Chapter XVI.—Publication

Section 1. Papers Approved for Publication.—No paper shall be published as having been read before a section unless it has received the approval and the endorsement of each member of the executive committee of the section before which it was read.

Sec. 2. Papers Must Be Ready for Publication.—Each author shall hand his paper to the secretary of the section immediately after it is read. The secretary shall endorse thereon that it has been read and shall hand it to the chairman of the executive committee. All papers approved by the executive committee shall be returned to the secretary of the section, who shall at once forward them to the editor of The Journal.

Sec. 3. Papers "Read by Title."—No paper shall be published as having been read before a section unless it has actually been read by its author, or unless, for special reasons, when the author has been present and prepared to read the paper, the section shall unanimously vote to have it read by title.

Sec. 4. Papers the Property of the Association.—All papers and reports presented to a section and approved by the executive committee shall become the exclusive property of the Association, provided that the Board of Trustees may permit an author to publish his paper elsewhere than in The Journal of the American Medical Association.

Miscellaneous

Chapter XVII.—Official Resolutions Approved by the House of Delegates

No memorial, resolution or opinion of any character whatever shall be issued in the name of the American Medical Association unless it has been approved by the House of Delegates.

Chapter XVIII.—Annual Fellowship Dues

The annual Fellowship dues and the subscription price of The Journal of the American Medical Association shall be fixed by the Board of Trustees, and the same shall be payable in advance, on the first day of January of each year, provided that the annual dues shall not exceed $8, and provided that the amount of the same shall be announced in The Journal of the American Medical Association not later than November 1 of each year. (As amended, 1929.)

Chapter XIX.—Articles of Incorporation

The House of Delegates, at any annual session, wherever the same may be held, may instruct the Board of Trustees to make any changes in the articles of incorporation in accordance with the law, which may appear desirable or which may be made necessary by any change or amendment to the Constitution and By-Laws of this Association.

Chapter XX.—Amendment to These By-laws

These By-Laws may be amended on a two thirds vote of the House of Delegates, provided that no amendment shall be acted on till the day following that on which it is introduced, except that the Board of Trustees may, by unanimous vote, make such changes, and such changes only, as may be required to adapt them to the rules and regulations of the United States postal authorities. (As amended, 1929.)

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STANDING RULES, HOUSE OF DELEGATES, AMERICAN MEDICAL ASSOCIATION, 1923

Papers for Publication

Adopted at Boston, June 8, 1865

"*Resolved*, That the several sections of this Association be requested, in the future, to refer no papers or reports to the Committee of Publication [the Board of Trustees], except such as can be fairly classed under one of the three

following heads, viz.: 1. Such as may contain and establish positively new facts, modes of practice or principles of real value. 2. Such as may contain the results of well devised original experimental researches. 3. Such as present so complete a review of the facts on any particular subject as to enable the writer to deduce therefrom legitimate conclusions of importance."

Solicitation of Votes

Adopted by the House of Delegates at Saratoga Springs, N. Y., June 13, 1902

"*Resolved*, That it is the sense of the House of Delegates of the American Medical Association that the solicitation of votes for office is not in keeping with the dignity of the medical profession, nor in harmony with the spirit of this Association, and that such solicitation shall be considered a disqualification for election to any offices in the gift of the Association."

Reports, Resolutions, Etc.

Adopted by the House of Delegates at Boston, June 7, 1906

"*Resolved*, That in future all reports, resolutions, amendments to the Constitution and By-Laws, etc., be furnished in duplicate, one copy to be furnished the Secretary for the official minutes and the other to committeemen; and that the Secretary be instructed to engage a typewritist for the use of committeemen in making their reports."

Pensions or Annuities

Adopted by the House of Delegates at Atlantic City, N. J., June 9, 1909

"*Resolved*, That no proposition or resolution advocating the payment of a pension or annuity to any member or former member of the Association be established by the House of Delegates without the previous consent and endorsement of the delegation of the state association of which the proposed beneficiary is or was a member."

Regarding the Effect on Membership of Removal to Another State

Adopted by the House of Delegates at Minneapolis, Minn., June 18, 1913

"*Resolved*, That nothing in Section 3, Chapter XI of the By-Laws (Effect on Membership of Removal to Another State) shall be construed as exempting any member of the American Medical Association from compliance with the requirements of the civil laws of the state or district into which he may have removed."

The Councils and the House of Delegates

Adopted by the House of Delegates at Atlantic City, N. J., June 4, 1912

The House of Delegates extends the courtesy of the floor to the members of the various councils of the Association, and especially requests the secretaries of these councils to attend the sessions of the House, according them the privilege of the floor, in order that the House may be constantly in position to obtain information concerning work that is being done by these councils, that this body may direct these activities.

Rules for the Guidance of the Committee on Credentials

Adopted by the House of Delegates at Atlantic City, N. J., June 6, 1912

1. Credentials shall be of two parts. The first part shall be sent to the office of the Secretary of the American Medical Association by the secretary

of the constituent association, not later than seven days prior to the first day of the first meeting of the House of Delegates, and shall be a list of delegates and alternates for that association. The constituent associations shall designate an alternate for each delegate, who may take the pledge of the delegate when authorized to do so by said delegate in writing. In the absence of such authority, any alternate who has been duly chosen by the constituent association may be seated in place of any delegate who is unable to attend, provided he presents proper official authority from said association. A certificate signed by the president or secretary of the constituent association shall be deemed legal authority (*as amended June 7, 1921*).

2. Each delegate shall be furnished with a credential by the secretary of the association by which he is elected on a prescribed form furnished by the Secretary of the American Medical Association, which shall give the date and term for which he was elected and who was elected to act as alternate for him in case of his inability.

3. A delegate, on presenting himself to the Committee on Credentials, may be seated even though he may not present part 2 of his credential, provided he is properly identified as the delegate who was elected by his association and whose name appears on the Secretary's record.

4. No alternate may be seated unless his credentials meet the same requirements as designated for the delegate and he can show written evidence that he is empowered by his delegate to act for him, except as provided for in Section 1 as amended. (*as amended June 7, 1921*).

5. When a constituent state association reports that one of its elected delegates and his elected alternate are both unable to attend a specified annual session of the American Medical Association, the constituted authority of said constituent state association may fill the vacancies caused by the absence of both an elected delegate and his elected alternate, and such a substitute delegate or his substitute alternate who presents proper credentials signed by the president and secretary of said constituent state association shall be eligible to regular membership in the House of Delegates of the American Medical Association in such a specified session (*as adopted, May 12, 1932*).

Procedure in Preferring Charges

Adopted by the House of Delegates at San Francisco, Cal., June 22, 1915

The Secretary of the American Medical Association shall file charges with the Judicial Council against Fellows of the Association when overt acts on the part of such Fellows, supported by reasonable evidence, are brought to the attention of the Secretary of the American Medical Association.

Rules for the Guidance of the Council on Scientific Assembly

Adopted by the House of Delegates at New York, June 7, 1917. Revised at Atlantic City, June 10, 1919

1. The term "unit" shall signify a single meeting of a section at an annual session.

2. The sections of the Scientific Assembly shall be limited at each annual session to the maximum number of three units.

3. The sections shall not hold more than one meeting on each of the days of the annual session during which section meetings are held.

4. The Council on Scientific Assembly shall apportion the morning and afternoon units at each annual session to the several sections.

PRINCIPLES OF MEDICAL ETHICS

OF THE

AMERICAN MEDICAL ASSOCIATION

(These principles were read to the jury.)

No. 24659. No. 24340

Supplemental Certificate of Amendment of the Certificate of Incorporation of Group Health Association, Incorporated

Whereas, under date of April 26, 1937, there was filed for record in the Office of the Recorder of Deeds of the District of Columbia a Certificate of Amendment of the Certificate of Incorporation of Group Health Association, Incorporated; and

Whereas, it has since been discovered that by mistake of the scrivener said Certificate recites, among other things, that "a meeting of the members of Group Health Association, Incorporated, was held in the Auditorium of the Department of Labor between 12th & 14th Strets, N. W., in the City of Washington, D. C., at the hour of 4:30 P. M., on the 22nd day of April, 1937" when, as a matter of fact said meeting was held at said place on the 21st day of April, 1937; and the purpose of this Certificate is to correct said error.

Now, Therefore, This is to Certify that, pursuant to the provisions of Section 601 et seq., of Sub-Chapter 3, of Chapter 18 of the Code of Laws of the District of Columbia, the Board of Trustees of Group Health Association, Incorporated, at a regular meeting held on the 22nd day of March, 1937, in the HOLC Building, in the City of Washington, D. C. unanimously adopted the following Resolution:

"Resolved, That Section Sixth of the Certificate of Incorporation of the corporation be amended so that the same shall read as follows:

The affairs of the corporation shall be managed and controlled by a Board of Trustees consisting of eleven members and until the election of the full Board, the names and post office addresses of three (3) of the members of the Board of Trustees are as follows:

Name and address: W. F. Penniman, 1869 Wyoming Avenue, N. W., Washington, D. C.; R. T. Berry, 3119 Rittenhouse St., N. W., Washington, D. C.; Pearl B. Murphy, 1630 Fuller Street, N. W., Washington, D. C.

Be it further Resolved, That a meeting of the members of the corporation be called in the Auditorium of the Department of Labor for the purpose of considering and ratifying the foregoing Resolution; and

Be it Further Resolved, That W. F. Penniman, its President be, and he hereby is, designated and constituted as its Attorney in Fact to execute and record these presents."

That, pursuant to said Resolution, a meeting of the members of Group Health Association, Incorporated, was held in the Auditorium of the Department of Labor, Constitution Avenue, between 12th & 14th Streets, N. W., in the City of Washington, D. C., at the hour of 4:30 P. M., on the 21st day of April, 1937, and the Resolution set forth above was adopted and ratified by a vote of 503 in favor of ratification.

In Testimony Whereof, the said Group Health Association, Incorporated, hath on the 11th day of October, A. D. 1937, caused these presents to be signed by W. F. Penniman, its President, attested by R. T. Berry, its Secretary, and its corporate seal to be hereunto affixed; and doth appoint W. F. Penniman, its true and lawful attorney in fact, to acknowledge and deliver these presents as its act and deed.

(Corporate Seal.)

Group Health Association, Incorporated. By W. F. Penniman, President. (Seal.)

Teste: R. T. Berry, Secretary.

Signed, sealed and delivered in the presence of: A. Blaine York, Jas. Julien Bush.

District of Columbia, to wit:

I, Dorothy I. King, a Notary Public in and for the District of Columbia, do certify that W. F. Penniman, who is personally well known to me as the person named as attorney in fact in the foregoing certificate bearing date on the 11th day of October, A. D. 1937, and hereto annexed, personally appeared before me in said District and as Attorney in Fact as aforesaid, and by virtue of the authority

vested in him by said certificate acknowledged the same to be the act and deed of Group Health Association, Incorporated.

Given under my hand and seal this the 11th day of October, A. D. 1937. Dorothy I. King, Notary Public, D. C. My Commission expires June 1, 1942. (Notarial Seal.)

Office of the Recorder of Deeds

District of Columbia

This is to Certify that the foregoing is a true and verified copy of the Certificate of Amendment to Certificate of Incorporation of Group Health Association, Incorporated, and of the whole of said Certificate of Amendment as filed in this Office the 13th day of October, A. D. 1937, and recorded in Liber 54, folio 485, et seq., one of the Incorporation Records of the District of Columbia.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of this Office this 21st day of Oct., A. D. 1940.

Wm. J. Tompkins, Recorder of Deeds, D. C. (Seal.)

No. 24340

Certificate of Amendment of the Certificate of Incorporation of Group Health Association, Incorporated.

This is to Certify That, pursuant, to the provisions of Section 601 et seq. Sub-Chapter 3, of Chapter 18 of the Code of Laws of the District of Columbia, the Board of Trustees of Group Health Association, Incorporated, at a regular meeting held on the 22nd day of March, 1937, in HOLC Building, in the City of Washington, D. C., unanimously adopted the following Resolutions:

"Resolved, That Section Sixth of the Certificate of Incorporation of corporation be amended so that the same shall read as follows:

The affairs of the corporation shall be managed and controlled by a Board of Trustees *consisting of eleven members and until the election of the full Board,* the names and post office addresses of three (3) of the members of the Board of Trustees are as follows:

W. F. Penniman, 1869 Wyoming Avenue, N. W., Washington, D. C.; R. T. Berry, 3119 Rittenhouse St., N. W., Washington, D. C.; Pearl B. Murphy, 1630 Fuller St., N. W., Washington, D. C.

Be it Further Resolved, That a meeting of the members of the corporation be called in the Auditorium of the Department of Labor for the purpose of considering and ratifying the foregoing Resolution; and

Be it Further Resolved, That W. F. Penniman, its President, be and hereby is, designated and constituted as its Attorney in Fact to execute and record these presents."

That, pursuant to said Resolution, a meeting of the members of Group Health Association, Incorporated, was held in the Auditorium of the Department of Labor, Constitution Avenue, between 12th & 14th Streets, N. W., in the City of Washington, D. C., at the hour of 4:30 P. M., on the 22nd day of April, 1937, and the Resolution set forth above was adopted and ratified by a vote of 503 in favor of ratification to 5 against ratification.

In Testimony Whereof, the said Group Health Association, Incorporated, hath on the 21st day of April, A. D. 1937, caused these presents to be signed by W. F. Penniman its President attested by R. T. Berry, its Secretary, and its corporate seal to be hereunto affixed; and doth appoint W. F. Penniman, its true and lawful Attorney in Fact, to acknowledge and deliver these presents as its act and deed.

(Corporate Seal)

Group Health Association, Incorporated, by W. F. Penniman, President. (Seal.) Teste: R. T. Berry, Secretary. (Seal.)

Signed, sealed and delivered in the presence of: A. Blaine York, Jas. Julien Bush.

DISTRICT OF COLUMBIA, to-wit:

I, Henry S. Wood, a Notary Public in and for the District of Columbia, do certify that W. F. Penniman, who is personally well known to me as the person named as the Attorney in Fact in the foregoing certificate bearing date on the 21st day of April, A. D. 1937, and hereto annexed, personally appeared before me in said District and as Attorney in Fact as aforesaid, and by virtue of the author-

ity vested in him by said certificate acknowledged the same to be the act and deed of Group Health Association, Incorporated.

Given under my hand and seal this the 21st day of April, A. D. 1937. Henry S. Wood, Notary Public, D. C. (Notarial Seal.)

Office of the Recorder of Deeds

District of Columbia

This is to certify that the foregoing is a true and verified copy of the Certificate of Amendment to Certificate of Incorporation of Group Health Association, Incorporated and of the whole of said Certificate of Amendment as filed in this Office the 26th day of April, A. D. 1937, and recorded in Liber 54, folio 91, et seq., one of the Incorporation Records of the District of Columbia.

In Testimony Whereof, I have hereunto set my hand and fixed the seal of this Office this 21st day of Oct., A. D. 1940.

Wm. J. Thompkins, Recorder of Deeds, D. C. (Seal.)

No. 24234.

Certificate of Group Health Association, Incorporated

We, the undersigned persons, of full age, citizens of the United States, a majority of whom are citizens of the District of Columbia, desiring to form a corporation in accordance with the provisions of, and for the purposes outlined in Chapter 5, of Title 5, Corporation of the Code of the District of Columbia, do hereby certify as follows:

First. The name by which this corporation shall be known is "Group Health Association, Incorporated". Its address, principal office, and place of business shall be Washington, D. C.

Second. The term for which it is organized shall be perpetual.

Third. The objects and purposes for which this corporation is formed are as follows:

To provide, without profit to the corporation, for the service of physicians and other medical attention and any

and all kinds of medical, surgical and hospital treatment to the members hereof, and their dependents, and the construction and operation of a clinic and medical office building, and the construction and operation of a hospital in the manner permitted by law, for the members hereof and their dependents, and the operation of a drug store or pharmacy, and the providing of nurses and of drugs and remedies for the members hereof and their dependents, and the furnishing of all forms of hospital service and attention to the members hereof and their dependents, and in general the giving to the membership of this association and their dependents of all forms of care, treatment or attention that may be required by the sick or in the prevention of disease.

To these ends the said corporation shall have the right of acquiring, taking, receiving and holding all manner of land, tenements, leaseholds, or any other kind of real estate or any interest therein, and of owning, improving and disposing of the same; borrowing money and securing the same by mortgage upon its real estate and otherwise, and holding and owning any kind of property, goods and chattels acquired by it in any manner, and of employing and disposing of the same for the purposes for which the corporation is formed and to further its general welfare; and of entering into, making, performing, and carrying out contracts of every sort and kind which may be necessary or convenient for the business and purposes of this corporation and which may be permitted by law.

The foregoing enumeration of specific powers shall not be deemed to limit or restrict in any manner the general powers of the corporation and the enjoyment and exercise thereof as conferred by the laws of the District of Columbia upon corporations organized under the provisions of the law for the purposes stated, but this corporation shall have the power to do all and everything necessary, suitable, and proper for the accomplishment of any of the purposes, or the attainment of any of the objects, or the furtherance of any of the powers herein set forth, so far as the same may be permissible under thhe law, and provided that the same may not be inconsistent with the laws under which this corporation is organized.

Fourth. The corporation shall have no capital stock but shall be an association controlled by its members. The

membership of the corporation shall be composed solely of employees of any branch of the United States Government service other than officers and enlisted men of the United States Army and Navy. All members shall have equal rights of membership and those whose dues have been paid at the time, if ever, liquidation of its affairs takes place shall have the right to share in the distribution of its assets.

Fifth. The private property of the members shall not be subject to the payment of the corporate debts or obligations and no personal liability therefor is assumed.

Sixth. The affairs of the Corporation shall be managed and controlled by a Board of Trustees. The names and post office addresses of the members of the Board of Trustees are as follows:

W. F. Penniman, 1869 Wyoming Avenue, N.W., Washington, D. C.

R. T. Berry, 3119 Rittenhouse Street, N.W., Washington, D. C.

Pearl B. Murphy, 1630 Fuller Street, N.W., Washington, D. C.

Seventh. Whenever, for any reason or cause, this corporation is dissolved, its affairs shall be liquidated by the Board of Trustees who are hereby vested with full power, within the limit provided by law, to sell any or all assets of the corporation, either separately or en masse, and to convey full and complete title thereto; and shall have full power, as prescribed by law, to do and perform all acts necessary and proper to fully and completely liquidate the affairs and distribute the proceeds, if any, among members of this corporation then in good standing and whose dues and assessments, if any, have been fully paid.

In Testimony Whereof we have hereunto subscribed our respective names and affixed our seals on this the 19th day of February, 1937.

In the presence of: Anthony W. De Poto, A. Blaine York, W. F. Penniman, R. T. Berry, Pearl B. Murphy. (Seal.)

DISTRICT OF COLUMBIA, ss:

I, Anthony W. De Poto, a Notary Public in and for the District of Columbia, do hereby certify that W. F. Penni-

man, R. T. Berry and Pearl B. Murphy, parties to the foregoing and annexed Certificate of Incorporation bearing date on the 19th day of February, 1937, personally appeared before me, in said District of Columbia, the said W. F. Penniman, R. T. Berry and Pearl B. Murphy, being personally well known to me as the persons who executed the said Certificate of Incorporation and acknowledged the same to be their act and deed.

Given under my hand and seal this 23 day of February, 1937. Anthony W. De Poto, Notary Public, D. C. (Notarial Seal.)

My commission expires 15th day of January, 1939.

Office of the Recorder of Deeds

District of Columbia

This is to certify that the foregoing is a true and verified copy of the Certificate of Incorporation of the Group Health Association, Incorporated, and of the whole of said Certificate of Incorporation, as filed in this Office the 24th day of Feb., 1937, and recorded in Liber 53, folio 556, et seq., one of the Incorporation Records of the District of Columbia.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of this Office this 21st day of Oct., A. D. 1940.

Wm. J. Tompkins, Recorder of Deeds, D. C. (Seal.)

By-Laws of Group Health Association, Incorporated.

The American Medical Association Was Incorporated in the State of Illinois Under the Provisions of "An Act Concerning Corporations", Approved April 18, 1872. As Amended and In Force on April 14, 1897, November 27, 1902, and September 24, 1904, said Act Provides:

Not for Pecuniary Profit

Associations (not for pecuniary profit) may be formed as hereafter provided. Any three or more persons, citizens of the United States, who shall desire to associate themselves with any lawful purpose, other than for pecuniary profit, may make, sign and acknowledge, before any officer authorized to take acknowledgements of deeds in this state,

and file in the office of the secretary of state, a certificate in writing, in which shall be stated in the name or title by which such corporation, society or association shall be known in law, the particular business and objects for which it is formed, the number of its trustees, directors or managers, and the name of the trustees, directors or managers selected for the first year of its existence.

Upon filing a certificate as aforesaid, the secretary of state shall thereupon issue a certificate of the organization of the corporation, society or association, making a part thereof a copy of all papers filed in his office in and about the organization thereof, and duly authenticated under his hand and seal of state; and the same shall be recorded in a book for that purpose, in the office of the recorder of deeds of the county in which the principal place of business of such corporation, society, or association is located. Upon complying with the foregoing conditions, the corporation, society or association, shall be deemed fully organized, and may proceed to business; provided, the secretary of state shall not issue a certificate of organization to any corporation, society or association under the name of any then existing.

Corporations, associations, and societies, not for pecuniary profit, formed under this act shall be bodies corporate and politic, by the name stated in such certificate; and by that name they and their successors shall and may have succession, and shall be persons in law capable of suing and being sued; may have power to make and enforce contracts in relation to the legitimate business of their corporation, society, or association; may have and use a common seal, and may change or alter the same at pleasure, and they and their successors by their corporate names, shall, in law, be capable of taking, purchasing, holding and disposing of real and personal estate for purposes of their organization; may, by their trustees, directors, or manager, make by-laws of this State, or of the United States, which by-laws among other things, shall prescribe the duties of all officers of the corporation, society, or association, and the qualifications of members of the corporation, and shall provide for annual meetings of such members, and for the calling of special meetings, when necessary, and for the number of members that shall constitute a quorum for the transaction of business at any such annual or special meetings.

At any such meeting members of the corporation may take part and vote in person or by proxy. The by-laws of the corporation, made by the trustees, directors, or managers, may be modified, altered, or amended at any such annual meeting; or at any adjourned session thereof. Associations and societies which are intended to benefit the widows, orphans, heirs and devisees of deceased members thereof, and members who have received a permanent disability shall not be deemed insurance companies.

Corporations, associations, and societies not for pecuniary profit, formed under the provisions of this act, may elect trustees, directors, or managers from the members thereof, in such manner, at such times and places, and for such periods, as may be provided by the certificate of incorporation, or in case such certificate does not contain such provisions, then as may be provided by the by-laws, which trustees, directors, or managers shall have the control and management of the affairs and funds of the corporation, society or association. Said trustees, managers or directors may upon consent of the corporation, society or association, expressed by the vote of a majority of the members thereof, borrow money, to be used solely for purposes of their organization, and may pledge their property therefor. Whenever trustees, managers or directors shall be elected, a certificate under the seal of the corporation giving the names of those elected and the term of their office, shall be recorded in the office of the recorder of deeds, where the certificate obtained is recorded. Vacancies in the board of trustees, directors or managers, shall be filled in the manner provided by their by-laws, and upon filling any vacancy, a like certificate shall be recorded.

No dividend or distribution of the property of such corporation, society or association shall be made until all debts are fully paid, and then only upon its final dissolution and surrender of organization and name; nor shall any distribution be made except by a vote of a majority of the members. When a distribution of their property is contemplated, the trustees, directors or managers shall file a statement under oath, in the office of the recorder of deeds, in the county where the business office is located, that all debts of the corporation, society or association are paid. And in case a distribution shall be made before filing such statement under oath, or if such statement shall be wilfully false, said trustees, directors, or managers, shall be jointly

and severally liable for the debts of such corporation, society or association. When a final dissolution of any corporation, society, or association, organized by virtue of this act, has been agreed upon, the trustees, directors, or managers shall file, in the office of the secretary of state, a certificate thereof, under seal of the corporation; and upon the filing of said certificate such organization shall cease to exist.

Any such corporation, society, or association may change its articles of association, in the manner prescribed by their own rule; but no such change shall be of legal effect, until a certificate thereof, under seal of such corporation, society, or association, shall be filed in the office of the secretary of state, and recorded in the office of the recorder of deeds in which the original certificate was recorded.

Gov. Ex. 2

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

Criminal No. 63,221

UNITED STATES OF AMERICA, Plaintiff,

v.

AMERICAN MEDICAL ASSOCIATION ET AL., Defendants.

Stipulation

It is hereby stipulated and agreed by and between counsel for the defendants and counsel for the United States that:

1. The publications entitled "Proceedings of the House of Delegates of the American Medical Association The Seventy-Seventh Annual Session Held at Dallas, Texas April 19-23, 1926"; "Proceedings of the House of Delegates of the American Medical Association The Seventy-Eighth Annual Session Held at Washington, D. C., May 16-20, 1927"; "Proceedings of the House of Delegates of the American Medical Association The Seventy-Ninth Annual Session Held at Minneapolis, Minn. June 11-15, 1928"; "Proceedings of the House of Delegates of the American Medical Association The Eightieth Annual Session Held at Portland, Ore. July 8-12, 1929"; "Proceedings of the House of Delegates of the American Medical Association The Eighty-First Annual Session Held at Detroit, Mich. June 23-27,

1930"; "Proceedings of the House of Delegates of the American Medical Association The Eighty-Second Annual Session Held At Philadelphia, Pa. June 8-12, 1931"; "Proceedings of the House of Delegates of the American Medical Association The Eighty-Third Annual Session Held At New Orleans, La. May 9-13, 1932"; "Proceedings of the House of Delegates of the American Medical Association The Eighty-Fourth Annual Session Held At Milwaukee, Wis. June 12-16, 1933"; "Proceedings of the House of Delegates of the American Medical Association The Eighty-Fifth Annual Session Held At Cleveland, Ohio June 11-15, 1934"; "Proceedings of the House of Delegates of the American Medical Association The Special Session Held At Chicago, Ill. February 15-16, 1935"; "Proceedings of the House of Delegates of the American Medical Association The Eighty-Sixth Annual Session Held at Atlantic City, N. J. June 10-14, 1935"; "Proceedings of the House of Delegates of the American Medical Association The Eighty-Seventh Annual Session Held At Kansas City, Mo., May 11-15, 1936"; "Proceedings of the House of Delegates of the American Medical Association The Eighty-Eighth Annual Session Held At Atlantic City, N. J. June 7-11, 1937"; "Proceedings of the House of Delegates of the American Medical Association The Eighty-Ninth Annual Session Held At San Francisco, Calif. June 13-17, 1938" were published and circulated by the American Medical Association.

2. The issues of The Journal of the American Medical Association for October 25, 1930; June 11, 1932; October 22, 1932; December 3, 1932; December 10, 1932; October 28, 1933; July 14, 1934; July 28, 1934; September 12, 1936; April 3, 1937; May 29, 1937; October 2, 1937; and March 11, 1939, were published and circulated by the American Medical Association.

3. The pamphlets entitled "Essentials of a Registered Hospital," "Essentials in a Hospital Approved for Training Interns," and "Essentials in a Hospital Approved for Residencies in Specialties," were published and circulated by the Council on Medical Education and Hospitals for the American Medical Association.

The foregoing contents of this stipulation and the stipulation itself are not to be considered as evidence offered on behalf of any of the parties hereto, unless and until the same, or any part thereof, is offered in evidence by any party hereto and then only as evidence on behalf of the

party offering same. Upon the offer by any party of any part or all of this stipulation, in evidence, said stipulation, or any part thereof, will be subject to the objection by any other party hereto that the facts hereby stipulated or any of said facts are incompetent, irrelevant and immaterial on the issues formed in this case.

No objection will be made that the stipulation is not competent evidence of the facts stated in the stipulation but objection may be made that the facts so stipulated are not competent on the issues formed.

Seibert Riebend, N., William E. Leahy, Edward M. Burke, Chas. J. Baker, John E. Laskey, Council for the Defendants. John Henry Lewin, Grant W. Kelleher, Special Assistants to the Attorney General.

Gov. Ex. 23

November 8, 1937.

George Washington University Hospital, 1339 H Street, N. W., Washington, D. C.

GENTLEMEN:

The Group Health Association, Inc., a mutual, voluntary organization, has been created by the employees of the Federal Home Loan Bank Board and its agencies for the purpose of providing themselves and dependent members of their families with medical and surgical care and, when necessary, with hospitalization in recognized hospitals of high standing.

As the representative of the Group Health Association, I hereby request the George Washington University Hospital to admit members of the Group Health Association for customary hospital service upon the request of its Medical Director, Dr. Henry Rolf Brown.

Request is also made to permit Dr. Raymond E. Selders, Surgeon, attached to the staff of the Group Health Association, * * * to attend these patients while hospitalized. For your information, we are attaching hereto a record of Dr. Selders' education, training and experience.

The Group Health Association will be responsible for the payment of the costs of hospitalization at customary rates, in each case for a period limited to 21 days for any one

illness for each patient admitted upon the request of the Medical Director.

If you desire further information or a conference with us, we shall be glad to have you let us know. Because of the importance of this request, however, an early and favorable reply will be appreciated.

Very truly yours, William F. Penniman, President.

Gov. Ex. 24

November 8, 1937.

Sibley Memorial Hospital, Washington, D. C.

GENTLEMEN:

The Group Health Association, Inc., a mutual, voluntary organization, has been created by the employees of the Federal Home Loan Bank Board and its agencies for the purpose of providing themselves and dependent members of their families with medical and surgical care and, when necessary, with hospitalization in recognized hospitals of high standing.

As the representative of the Group Health Association, I hereby request the Sibley Memorial Hospital to admit members of the Group Health Association for customary hospital service upon the request of its Medical Director, Dr. Henry Rolf Brown.

Request is also made to permit Dr. Raymond E. Selders, Surgeon, attached to the staff of the Group Health Association, * * * to attend these patients while hospitalized. For your information, we are attaching hereto a record of Dr. Selders' education, training and experience.

The Group Health Association will be responsible for the payment of the costs of hospitalization at customary rates, in each case for a period limited to 21 days for any one illness for each patient admitted upon the request of the Medical Director.

If you desire further information or a conference with us, we shall be glad to have you let us know. Because of the importance of this request, however, an early and favorable reply will be appreciated.

Very truly yours, William F. Penniman, President.

Gov. Ex. 25

Group Health Association, Incorporated
1328 Eye Street, N. W.
Washington, D. C.

November 8, 1937.

Dr. Louis H. Taylor, President, Sibley Memorial Hospital, 1140 N. Capitol Street, N. W., Washington, D. C.

DEAR DR. TAYLOR:

For your information, I am attaching hereto a copy of a letter addressed to the Sibley Memorial Hospital, requesting permission to admit patients who are members of the Group Health Association to the hospital upon the request of the Medical Director.

Also, a request to permit Dr. Raymond E. Selders, Surgeon, who is attached to the staff of the Group Health Association to attend these patients while hospitalized.

For your further information, there is attached a record of Dr. Selders' education, training and experience.

Your assistance in obtaining prompt and favorable action will be very much appreciated.

Very truly yours, William F. Penniman, President.

Gov. Ex. 26

November 8, 1937.

Episcopal Ear, Eye and Throat Hospital, 1147 15th Street, N. W., Washington, D. C.

GENTLEMEN:

The Group Health Association, Inc., a mutual, voluntary organization, has been created by the employees of the Federal Home Loan Bank Board and its agencies for the purpose of providing themselves and dependent members of their families with medical and surgical care and, when necessary, with hospitalization in recognized hospitals of high standing.

As the representative of the Group Health Association, I hereby request the Episcopal Ear, Eye and Throat Hospital to admit members of the Group Health Association

for customary hospital service upon the request of its Medical Director, Dr. Henry Rolf Brown.

Request is also made to permit Dr. Raymond E. Selders, Surgeon, attached to the staff of the Group Health Association, * * * to attend these patients while hospitalized. For your information, we are attaching hereto a record of Dr. Selders' education, training and experience.

The Group Health Association will be responsible for the payment of the costs of hospitalization at customary rates, in each case for a period limited to 21 days for any one illness for each patient admitted upon the request of the Medical Director.

If you desire further information or a conference with us, we shall be glad to have you let us know. Because of the importance of this request, however, an early and favorable reply will be appreciated.

Very truly yours, William F. Penniman, President.

Gov. Ex. 28

November 8, 1937.

New Emergency Hospital, 1711 New York Avenue, N. W., Washington, D. C.

GENTLEMEN:

The Group Health Association, Inc., a mutual, voluntary organization, has been created by the employees of the Federal Home Loan Bank Board and its agencies for the purpose of providing themselves and dependent members of their families with medical and surgical care and, when necessary, with hospitalization in recognized hospitals of high standing.

As the representative of the Group Health Association, I hereby request the New Emergency Hospital to admit members of the Group Health Association for customary hospital service upon the request of its Medical Director, Dr. Henry Rolf Brown.

Request is also made to permit Dr. Raymond E. Selders, Surgeon, attached to the staff of the Group Health Association, * * * to attend these patients while hospitalized. For your information, we are attaching hereto a record of Dr. Selders' education, training and experience.

The Group Health Association will be responsible for the payment of the costs of hospitalization at customary rates, in each case for a period limited to 21 days for any one illness for each patient admitted upon the request of the Medical Director.

If you desire further information or a conference with us, we shall be glad to have you let us know. Because of the importance of this request, however, an early and favorable reply will be appreciated.

Very truly yours, William F. Penniman, President.

Gov. Ex. 29

Group Health Association, Incorporated
1328 Eye Street, N. W.
Washington, D. C.

November 8, 1937.

Major Gist Blair, President, Board of Trustees, New Emergency Hospital, Union Trust Building, Washington, D. C.

Dear Major Blair:

For your information, I am attaching hereto a copy of a letter addressed to the New Emergency Hospital, requesting permission to admit patients who are members of the Group Health Association to the hospital upon the request of the Medical Director.

Also, a request to permit Dr. Raymond E. Selders, Surgeon, who is attached to the staff of the Group Health Association to attend these patients while hospitalized.

For your further information, there is attached a record of Dr. Selders' education, training and experience.

Your assistance in obtaining prompt and favorable action will be very much appreciated.

Very truly yours, William F. Penniman, President.

Gov. Ex. 31

[Stamp:] Council on Medical Education and Hospitals. Dec. 14, 1937

The Medical Society of Milwaukee County

Theodore Wiprud, Executive Secretary

Bankers' Building
Milwaukee, Wisconsin

December 13, 1937.

Dr. Peterson.

GENTLEMEN:

What requirements must be met by hospitals to be recognized for interne training?

As I understand it members of the staffs of these institutions must be members of their local county medical society. Is this equally true of associate and visiting staff members?

I would appreciate an early reply.

Cordially yours, Theodore Wiprud, Executive Secretary.

American Medical Association, Council on Medical Education and Hospitals, 535 North Dearborn Street, Chicago, Illinois.

Gov. Ex. 33

Roster

THE MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA, 1937

1718 M Street, Washington, D. C.

LIST OF MEMBERSHIP—1937, INCLUDING CHANGES

"E"—Elected
"S"—Signed
* —Life Members

Number on Rolls

At beginning of year:		At end of year:	
Active	707	Active	741
Life	43	Life	48
Associate	119	Associate	134
Honorary	7	Honorary	7
Total	876	Total	930

Active and Life Members

Seniority No.	
324	Abbe, Truman, 3741 Huntington Street, N. W.
1358	Abernathy, Theodore Judson, 1411 Twentieth Street, N. W. E. 1/6; S. 1/25.
398	Adams, Roy Delaplaine, 1150 Connecticut Avenue, N. W.
948	Alexander, Guy Levis, 7214 Blair Road, N. W.
775	Alexander, Samuel Allen, 1801 Eye Street, N. W.
1087	Alfaro, Victor Ricardo, 1801 Eye Street, N. W.
428	Allen, Charles Walker, 3115 Forty-sixth Street, N. W.
1353	Allman, Francis Charles, 127 Twelfth Street, S. E. E. 1/6; S. 1/19.
1196	Alpher, Isadore Meyer, The Farragut Medical Building.
312	Anderson, Charles Loftus Grant, 1739 Eye Street, N. W. Trans. to Ass. 12/15/37.
930	Anderson, Harry Ford, 1746 K Street, N. W.
1300	Anderson, William Staton, 2010 R Street, N. W.
866-A	Argy, William Philip, 1150 Connecticut Avenue, N. W.
322	Arnold, John Sheridan, 5000 Illinois Avenue, N. W.
1146	Aronstein, Charles Goodman, 1707 Columbia Road, N. W.
704	Atkinson, Francis Vernon, 516 A Street, N. E.
135	*Atkinson, Wade Hampton, 1402 M Street, N. W.
1266	Atkinson, Walter, 1835 Eye Street, N. W.
1312	Ault, Garnet Walter, 1801 Eye Street, N. W.
515	Avery, Frederick Scott, 1623 Massachusetts Avenue, N. W.
1112	Baber, John Marion, 1819 G Street, N. W.
1372	Bachrach, Louis Bernard, The Farragut Medical Bldg. E. 3/3; S. 3/18.
647	Bacon, Robert B., 216-217 Bond Building.
879	Bagusin, Alexis Matthew, 5726 Cross Country Blvd., Baltimore, Md. Resigned 12/15/37.
236	Bailey, Grafton D. P., Barrister Building.
399	Bain, Seneca Bray, 1301 Fairmont Street, N. W.
687	Baker, May Davis, 1767 Lanier Place, N. W.
121	*Baker, Robert W., 1827 Jefferson Place, N. W.
1228	Baker, Wyrth Post, 1861 Wyoming Avenue, N. W.
1307	Ball, George Lindsay, 1301 Longfellow Street, N. W.
912	Ballinger, William McCormick, 1801 Eye Street, N. W.
94	*Balloch, Edward Arthur, The Wyoming.
124	*Barber, James Henry Morgan, 1751 Columbia Road, N. W.
1174	Barger, Gervase James Patterson, 1125 Buchanan Street, N. W.
310	Barker, Howard Wilson, 2770 Kingsbridge Terrace, Bronx, N. Y.
442	Barnhart, Grant Samuel, 1434 Rhode Island Avenue, N. W.
998	Barr, Eugene Osmun, The Farragut Medical Building.
231	Barry, Edmund, 1844 Columbia Road, N. W.
353	Bartsch-Dunne, Anna, 2900 Connecticut Avenue, N. W.
1003	Bateman, Joseph J., 3010 Wisconsin Avenue, N. W.
178	*Battle, Lewis Junius, 1401 Kennedy Street, N. W.
650	Battles, Samuel Lee, Montgomery Apartment
446	Bayne, Joseph Breckenridge, Oxon Hill, Md.
302	Beale, Robert Somervell, 1318 Nineteenth Street, N. W.
337	Beall, Charles Middleton, 4611 Sixteenth Street, N. W.
1382	Beard, William Henry, 2814 Connecticut Avenue, N. W. E. 5/19; S. 5/28.
976	Becker, Samuel Maurice, 2028 Sixteenth St., N. W. Expelled 5/12/37.
223	Behrend, Edwin Bernhard, 1854 Biltmore Street, N. W.
1330	Belair, Joseph Felix, 1726 Eye Street, N. W.
1024	Belt, Norvell, 1726 Eye Street, N. W.

Seniority No.	
1075	Benjamin, Samuel, 1801 Calvert Street, N. W.
317	Bennett, Adolphus Bogardus, 1801 Eye Street, N. W.
1135	Benton, Frederick Leslie, 4928 Reservoir Road, N. W.
724	Bernton, Harry Saul, 1922 Eye Street, N. W.
1391	Betz, Andrew Joseph, 1029 Vermont Avenue, N. W. E. 5/19; S. 8/9.
1055	Bier, Robert Allan, 1954 Columbia Road, N. W.
849	Bierman, Morris I., 1801 Eye Street, N. W.
525	Biggs, Joseph Rozier, 1323 Girard Street, N. W.
425	Billard, Charles Louis, 1029 Vermont Avenue, N. W.
1073	Birdsall, Gregg Custis, 1832 Kalorama Road, N. W.
427	Birtwell, Daniel Thomas, 1325 Columbia Road, N. W.
308	Biscoe, Frank Lee, Veterans Administration Facility, Wadsworth, Kansas. Died, 7/18/37.
1113	Blair, Montgomery, Jr., 2222 Que Street, N. W.
1345	Blajwas, Abe, 2310 Connecticut Ave., N. W. E. 1/6; S. 1/14.
1250	Bliss, Charles Lincoln, The Kenesaw.
1129	Bloedorn, Walter Andrew, 1835 Eye Street, N. W.
1389	Bockoven, Sterling, 1752 Massachusetts Ave., N. W. E. 5/19; S. 6/18.
547	Bogan, Joseph Borrows, 1320 Ingraham Street, N. W.
1187	Bolton, Robert Heston, 2700 Thirty-sixth Street, N. W.
599	Borden, Daniel LeRay, 1935 Eye Street, N. W.
1107	Bosworth, Robert Joseph, 811 Eighth Street, N. E.
105	*Bowen, William Sinclair, 3125 Cathedral Avenue, N. W.
761	Bowne, Charles Jacob, 2001 Rhode Island Avenue, N. E.
1323	Boyd, Walter Willard, 1835 Eye Street, N. W.
214	Braden, Frank Wheeler, 628 East Capitol Street.
740	Bradley, Jeter Carroll, The Farragut Medical Building.
1260	Bradley, Thomas, 1601 Twenty-eighth Street, N. W.
767	Brady, John Chester, 35 New York Avenue, N. W.
482	Brady, Zadoc Maurice, 1312 Kenilworth Avenue, N. E.
360	Brandenburg, Wilbur Henry Rietz, 1746 K Street, N. W. Died, 5/11/37.
1230	Branson, Joseph Holmes, 3531 Sixteenth Street, N. W.
781	Breeding, Earle Griffith, 1801 Eye Street, N. W.
987	Brennan, John Francis, 3425 Twelfth Street, N. E.
1328	Briggs, Crenshaw Douglas, 1726 Eye Street, N. W.
1100	Brilmyer, George Joseph, 601 Jefferson Street, N. W.
578	Brooks, J. Lester, The Woodward Building.
1039	Brotman, Irving, 1746 K Street, N. W.
808	Brown, Grafton Tyler, 1801 Eye Street, N. W.
1043	Brown, Leo T., 1835 Eye Street, N. W.
1329	Brown, Radford, 1601 Nineteenth Street, N. W.
97	*Brumbaugh, Gaius Marcus, 905 Massachusetts Avenue, N. W.
1398	Brue, Peter Paul, 413 Ingraham Street, N. W. E. 11/3; S. 11/16.
1222	Bruner, Weston, Jr., 4911 Van Ness Street, N. W.
936	Bullock, John Henry, 766 Rock Creek Church Road, N. W.
615	Burbank, Caryl, 1801 Eye Street, N. W.
423	Burch, Edward Warren, 336 Maryland Avenue, N. E.
1380	Burch, Warren Bernard, 212 Maryland Avenue, N. E. E. 5/19; S. 5/27.
1030	Burdick, William Foster, 5430 Connecticut Avenue, N. W.
562	Burke, John Woolfolk, 2311 Tracy Place, N. W.
591	Bush, Daniel P., 1673 Columbia Road, N. W.
962	Butler, Homer Kirk, 1241 Pennsylvania Avenue, S. E.
96	*Butler, William Kennedy, 1207 M Street, N. W.
807	Butz, Abraham Depue, 428 Eighth Street, S. E.
809	Cafritz, Edward Alexander, 1835 Eye Street, N. W.
736	Cahill, James Augustine, Jr., 2607 Connecticut Avenue, N. W.

Seniority No.	
878	Cajigas, Tomas, 1801 Eye Street, N. W.
1264	Cake, Charles Powell, 1726 Eye Street, N. W.
828	Campbell, Charles Berger, The Farragut Medical Building.
791	Campbell, Elliott Muse, 3109 Sixteenth Street, N. W.
1313	Campbell, Neil Porter, 1409 Newton Street, N. W.
801	Carbo, Ralph John, 1105 Buchanan Street, N. W.
1360	Cardwell, John Leland, 1371 Kalmia Road, N. W. E, 1/6; S, 1/30.
1216	Carr, Elma Bebee, 1029 Vermont Avenue, N. W.
1221	Carroll, Charles Troll, 6801 Sixth Street, N. W.
1276	Carter, Hill; 1029 Vermont Avenue, N. W.
1336	Casady, John Warren, 5022 Reno Road, N. W. E, 1/6; S, 1/13.
737	Castell, Louis Bernard, 1835 Eye Street, N. W.
1365	Cate, Leah Huntley, 2737 Macomb Street, N. W. E, 1/6; S, 3/3.
1203	Caulfield, Philip Alexander, 2607 Connecticut Avenue, N. W.
1153	Cavanagh, John Richard, 1919 North Capitol Street.
656	Caylor, Claude Carlisle, 3733 Warren Street, N. W.
234	Chadwick, DeWitt Clinton, 1120 Vermont Avenue, N. W.
137	*Chappell, John William, 3901 Albemarle Street, N. W.
1333	Chase, Morris, 4100 Fourteenth Street, N. W.
1125	Chase, William Wiley, 1801 Eye Street, N. W.
946	Chenery, Alan Jeffries, 1835 Eye Street, N. W.
1072	Chickering, Elizabeth Emery, 3601 Connecticut Avenue, N. W.
1359	Chinn, Austin Brockenbrough, 1746 K Street, N. W. E, 1/6; S, 1/26.
526	Chipman, Cline N., 1420 Rhode Island Avenue, N. W.
1197	Choisser, Roger Morrison, 3500 Thirty-sixth Street, N. W.
700	Christie, Arthur Carlisle, 1835 Eye Street, N. W.
127	*Clark, George Campbell, 1339 East Capitol Street.
438	Clarke, William Earl, 1029 Vermont Avenue, N. W.
887	Claud, Harry Lee, 1801 Eye Street, N. W.
177	*Claytor, Thomas Ash, 1826 R Street, N. W.
819	Clements, Lyman Jairus, 512 B Street, N. E.
1279	Clements, William Heman, 512 B Street, N. E.
626	Coale, Edith SeVille, 800 Sixteenth Street, N. W.
1033	Cockerille, Lawrence Lee, The Farragut Medical Building.
935	Coe, Frederick Oscar, 1835 Eye Street, N. W.
1102	Cogswell, Frank Benjamin, 4815 Fourteenth Street, N. W.
1192	Cohen, Roger Stahel, 1726 Eye Street, N. W.
1346	Coiner, Emmett Grayson, 2700 Connecticut Ave., N. W. E, 1/6; S, 1/14
913	Cole, Hazen Eugene, 639 East Capitol Street.
1226	Collins, James Lloyd, 1801 Eye Street, N. W.
1124	Colvin, Henry Lynn, 1211 Sheridan Street, N. W.
535	Conklin, Coursen Baxter, 1801 Eye Street, N. W.
590	Conklin, Rush West, 3100 Twentieth Street, N. E.
981	Conlon, Robert Joseph, 1424 K Street, N. W.
1130	Connolly, Aloysius John Buchmans, 1635 Irving Street, N. W.
732	Connor, Jack Anthony, 2026 Sixteenth Street, N. W.
1002	Constantinople, Panagiotes S., 1801 Eye Street, N. W.
458	Constas, John, 1111 Massachusetts Avenue, N. W.
1325	Cooper, Linn Fenimore, 2222 Que Street, N. W.
1004	Cooper, Robert Ulsh, 2210 Nichols Avenue, S. E.
294	Copeland, Edgar Pasquel, 2711 Woodley Road, N. W.
1347	Corley, Karl Coates, 3921 Ingomar Street, N. W. E, 1/6; S, 1/14
1184	Costello, James Roger, The Farragut Medical Building.
1208	Costenbader, Frank Duncan, 1726 Eye Street, N. W.
1017	Coulter, Archibald Barklie, 1150 Connecticut Avenue, N. W.
1114	Courtney, Francis Xavier, 5601 Fourth Street, N. W.

Seniority No.	
774	Cousins, Sidney Charles, 3921 Ingomar Street, N. W.
582	Cox, Oliver Clemence, 4616 Argyle Terrace, N. W.
1281	Cox, Ronald Atmore, The Farragut Medical Building.
732	Crawford, Charles Brown, 1337 Twenty-first Street, N. W.
937	Creswell, George William, 1630 R Street, N. W.
1188	Crisp, Edwin Stanton, 329 East Capitol Street.
852	Crisp, Thomas Benton, Jr., 501 Eighth Street, N. E.
1321	Cromer, Jerry Keith, 1801 Eye Street, N. W.
1348	Cross, Allen Slayman, 1100 Pennsylvania Ave., S. E. E, 1/6; S, 1/14.
153	*Crosson, Henry Joseph, 1746 M Street, N. W.
897	Crowe, John W., 1325 Park Road, N. W.
719	Crowley, Jerome F., 1150 Connecticut Avenue, N. W.
733	Culver, Cyrus Whitney, 3781 Oliver Street, N. W.
968	Cummings, James Gordon, 203 District Building.
1179	Cummings, Edward Joseph, 1835 Eye Street, N. W.
867	Cusack, William Joseph, 1621 Connecticut Avenue, N. W.
1062	Custis, James Bayard Gregg, 1860 Columbia Road, N. W.
1227	Custis, Marvin A., 626 East Capitol Street.
969	Daniels, Worth Bagley, 1726 Eye Street, N. W.
1149	Dardinski, Vincent Joseph, 309 Marion Avenue, Clarendon, Va.
494	Darnall, Moses Hubbard, 1006 The Conrad Apartment.
1020	Darner, Henry Lauran, The LaSalle.
1251	Daughton, Alva Duckett, East Falls Church, Va.
409	Davidson, Edward Young, 512 East Capitol Street.
1101	Davies, Harry Francis, 1835 Eye Street, N. W.
759	Davis, Daniel, 1901 Wyoming Avenue, N. W.
909	Davis, David, 1835 Eye Street, N. W.
1377	Davis, Edgar Willingham, 1150 Connecticut Ave., N. W. E, 1/6; S, 3/30.
832	Davis, Hugh Jefferson, 1801 Eye Street, N. W.
622	Davis, William Thornwall, 927 Farragut Square, N. W.
1099	Deaf, Benjamin Franklin, Jr., 1835 Eye Street, N. W.
1335	deButts, Richard Earle, 1150 Connecticut Ave., E, 11/4/36; S, 1/7/37.
1008	Deep, Anthony Abraham, 941 Massachusetts Ave., N. W. Died 12/12/37.
1210	DeKleine, William, 3000 Tilden Street, N. W.
954	Demas, Charles John, 1301 Massachusetts Ave., N. W. Reinstated 3/3/37.
950	DeMayo, John Lorain, 5039 Kansas Avenue, N. W.
893	De Saussure, Richard Laurens, 1800 Eye Street, N. W.
1272	Dessoff, Joseph, 1726 Eye Street, N. W.
1118	Dessoff, Samuel, The Farragut Medical Building.
1095	Dewey, George, 1801 Eye Street, N. W.
1027	Diatz, Philip, 700 Emerson Street, N. W.
1202	Dodek, Samuel Mayer, 1835 Eye Street, N. W.
1337	Dolan, John Vincent, 3100 Conn. Ave., N. W. E, 1/6; S, 1/13.
910	Donahue, Matthew Edward, 1617 Thirty-fifth Street, N. W.
697	Donn, Frederick Young, 801 Decatur Street, N. W.
349	Donnally, Harry Hampton, 1612 Eye Street, N. W.
929	Dooley, Lucile, 2440 Sixteenth Street, N. W.
835	Dorman, Horatio Nelson, Stoneleigh Court.
1338	Douglas, Harry Samuel, 1673 Columbia Road, N. W. E, 1/6; S, 1/13.
383	Douglas, James Franklin, 1209 Floral Street, N. W.
1262	Dowling, Harry Filmore, 2111 Bancroft Place, N. W.
246	Dowling, Thomas, 1006 Jefferson Street, Wilmington, Del.
1268	Downey, Harold Rivers, 1740 M Street, N. W.
624	Duehring, Frank Edward, 1830 Belmont Road, N. W.
1168	Duffey, Depue Hazen, 501 Allison Street, N. W.

Seniority No.	
1105	Dull, John Reed, 314 East Capitol Street.
1189	Dunkley, Richard Edgar, 1801 Eye Street, N. W.
583	Dunmire, Roy Franklin, 119 Eighth Street, S. E.
1109	Dunn, William LeRoy, 1150 Connecticut Avenue, N. W.
1035	Earley, James Hugh, 1801 Eye Street, N. W.
951	Earnest, John Paul, Jr., 2025 R Street, N. W.
553	Ecker, Lewis Charles, 1725 N Street, N. W.
728	Eckhardt, John Carl, 1834 Irving Street, N. W.
1361	Egan, Thomas A., 1835 Eye Street, N. W. E. 1/6; S. 2/6.
778	Eichenlaub, Frank Joseph, 1835 Eye Street, N. W.
927	Einstein, Hugh, 1835 Eye Street, N. W.
1291	Eisenberg, Herman, 311 Fifteenth Street, N. E.
1028	Ellerson, Edmund Murdaugh, 1726 Eye Street, N. W.
988	Ellis, George Joseph, 636 East Capitol Street.
638	Ellison, Everett Monroe, 1720 M Street, N. W.
1164	Elvin, John Henry, 6600 Fifth Street, N. W.
923	Elward, Joseph Francis, 1726 Eye Street, N. W.
1076	Enlows, Ella Morgan Austin, 1726 Eye Street, N. W.
714	Eppard, George Irving, 601 Minnesota Avenue, N. E.
1042	Esler, James Wallace, 800 Sixteenth Street, N. W.
1339	Ethridge, Clayton Bernard, 1801 Eye Street, N. W. E. 1/6; S. 1/13.
796	Fadeley, James McNelledge, 1835 Eye Street, N. W.
1396	Fenton, Enoch Raymond, 1835 Eye Street, N. W. E. 11/3; S. 11/11.
244	Ferguson, Charles Emory, 1414 Delafield Place, N. W.
758	Fernald, Clarence Joel, 1514 Columbia Road, N. W.
1097	Fields, Russell Joseph, 1726 Eye Street, N. W.
1363	Finnegan, John F., 1342 East Capitol Street. E. 1/6; S. 2/16.
1137	Finucane, Daniel Leo, Children's T. B. Hosp., Glenn Dale, Md.
1104	Fischer, Aubrey David, 1835 Eye Street, N. W.
1045	Fishback, Frederick Coleman, 1801 Eye Street, N. W.
273	Fisher, Howard, 18 Jewell Road, Clarendon, Va.
1288	Fletcher, Harry Marshall, 4535 Wisconsin Avenue, N. W.
382	Flynn, James Augustin, 1511 Rhode Island Avenue, N. W.
666	Foley, Thomas Madden, 1835 Eye Street, N. W.
1144	Fong, Theodore Claremont Chen, 1374 Somerset Place, N. W.
1095	Ford, Rowland Houghton, 5213 Fourteenth Street, N. W.
1121	Foster, Stuart Oliver, 1726 Eye Street, N. W.
354	Fowler, Harry Atwood, Stoneleigh Court.
89	*Fowler, William Charles, Woodley Park Towers. Died 11/19/37.
772	Foxwell, Raymond Kennedy, 1029 Vermont Avenue, N. W.
266	Foye, Amelia Frances, 1807 R Street, N. W.
859	Frankland, Walter Ashby, 2145 C Street, N. W.
1063	Freeman, Walter, 1028 Connecticut Avenue, N. W.
1256	French, Bernard Semple, 1726 M Street, N. W.
1080	French, Leslie Howson, 1726 Eye Street, N. W.
1115	Frischkorn, Robert Walter, 1238 Monroe Street, N. E.
1319	Fugitt, Elmer Wink, 310 S Street, N. E.
1399	Fulcher, Oscar Hugh, 1726 Eye Street, N. W. E. 11/3; S. 11/17.
400	Fuller, Homer Gifford, 1835 Eye Street, N. W.
1021	Gable, George Roland, The Farragut Medical Building.
1295	Gaffney, Leo Bernard, 1801 Eye Street, N. W.
995	Gager, Leslie Tracy, 1720 M Street, N. W. Dropped NPD 12/31/37.
1031	Gainés, John Marshall, 1406 Kennedy Street, N. W.
463	Gannon, James Alonzo, 1915 Biltmore Street, N. W.
1022	Gantz, Frank E., The Farragut Medical Building.
1159	Gard, Perry William, 2900 Connecticut Avenue, N. W.

Seniority No.	
508	Garnett, Alexander Yelverton P., 1824 Massachusetts Avenue, N. W.
904	Gates, Herbert Stelwyn, 133 Twelfth Street, S. E.
971	Geier, Fred Aloysius Joseph, 1029 Vermont Avenue, N. W.
1394	Gerber, Aaron Harry, 2025 Eye Street, N. W. E. 11/3; S. 11/10.
281	Gibson, Frank Eugene, 927 Eye Street, N. W.
1170	Gilbert, Joseph LeRoy, 1437 Rhode Island Avenue, N. W.
734	Gill, Grover Bache, 1726 Eye Street, N. W.
84	*Gill, William Tignor, 1029 Vermont Avenue, N. W.
782	Gill, William Tignor, Jr., The Farragut Medical Building.
903	Glenn, Joseph Burton, 1606 Twentieth Street, N. W.
1273	Glover, Mervin Wilbur, 1801 Eye Street, N. W.
1305	Golden, Benjamin, 1900 F Street, N. W.
862	Goldenberg, Carl, 1629 Columbia Road, N. W.
1220	Goodman, Edgar Leonard, 1801 Eye Street, N. W.
866-B	Goodman, William Dennis, The Farragut Medical Building.
933	Gookin, Edward Richard, 1113 Sixteenth Street, N. W.
1082	Gordon, Leon Stuart, 1801 Eye Street, N. W.
1332	Govern, Frank Witton, 1726 M Street, N. W.
1057	Graeff, Earl William, 3400 Twenty-fourth Street, N. E.
1224	Grass, Edward Jacob, 3700 Massachusetts Avenue, N. W.
644	Gray, Augustus Clagett, 1242 Newton Street, N. E.
916	Greaney, William Francis, 616 Rock Creek Church Road, N. W.
898	Grecar, James Noah, Jr., 1740 M Street, N. W.
318	Greene, Louis Storrow, 1710 Rhode Island Avenue, N. W.
304	Greene, Samuel H., Jr., 1460 Rhode Island Avenue, N. W.
1311	Greenlaw, Joseph J., 1632 Rhode Island Avenue, N. W.
773	Griffith, James Beaty, 1746 K Street, N. W.
250	Groover, Thomas Allen, 1835 Eye Street, N. W.
1310	Grosvenor, Mabel Earlakenden, 2010 R Street, N. W.
270	Gunion, John Paul, 6821 Laurel Street, N. W.
447	Gunning, Edward J., 1616 Sixteenth Street, N. W.
1223	Gurwin, Bernard Jay, 801 Fifth Street, N. E. Tr. to Ass. 11/3/37.
1257	Gwynn, Henry Beall, 1514 Thirtieth Street, N. W.
265	Gwynn, William Clarence, 1514 Thirtieth Street, N. W.
1088	Hadley, Ernest Elvin, 1835 Eye Street, N. W.
1232	Hadley, Henry Gilbert, 1252 Sixth Street, S. W.
199	*Hagner, Francis Randall, 1835 Eye Street, N. W.
98	*Hall, Arthur Joseph, 3022 Porter Street, N. W.
693	Hall, Custis Lee, 1801 Eye Street, N. W.
972	Halley, Charles Robert Lee, 1801 Eye Street, N. W.
144	*Hammett, Charles Maddox, 1713 Rhode Island Avenue, N. W.
1395	Hanby, John Estes, 901 Sixteenth Street, N. W. E. 11/3; S. 11/10.
1175	Hand, Frank Marian, 901 Sixteenth Street, N. W.
1378	Hantman, Irvin, The Farragut Medical Bldg. E. 1/6; S. 3/30.
621	Hardesty, William Slaughter, 1629 Columbia Road, N. W.
1183	Hardin, Bernard Lauriston, Jr., 1329 Connecticut Avenue, N. W.
165	*Harding, Harry Theodore, 1401 Fairmont Street, N. W.
1292	Harmon, Robert Howe, The Mayflower Hotel.
941	Harnsberger, Charles Whitfield, 4201 New Hampshire Avenue, N. W.
965	Harris, Joseph, The Farragut Medical Building.
894	Hawfield, James, 1028 Connecticut Avenue, N. W.
1235	Hawken, Strafford Wendell, 1150 Connecticut Avenue, N. W.
1142	Haws, Ralph John, St. Elizabeths Hospital.
1016	Haynes, William Preston, The Farragut Medical Building.
513	Hazen, Henry Honeyman, 1911 R Street, N. W.
41	*Hazen, William P. C., 511 East Capitol Street.

Seniority No.	
1238	Heath, Alma Fife, 1833 Monroe Street, N. E.
1058	Heiges, Melville Lynwood, 6940 Piney Branch Road, N. W.
172	*Heinecke, George Burton, 5634 Georgia Avenue, N. W.
344	Heitmuller, George Henry, 1333 N Street, N. W.
230	Heller, Joseph Milton, 1746 K Street, N. W.
990	Hendry, Ernest Singleton, 1810 N Street, N. W.
480	Henning, Carl, 1752 Massachusetts Avenue, N. W.
1199	Herbst, William Parker, Jr., 1726 Eye Street, N. W.
755	Herschman, Myer Jerome, The Farragut Medical Building.
1094	Hertzberg, Herman, 1726 Eye Street, N. W.
1139	Hess, Valentine Martin, The Farragut Medical Building.
55	*Hickling, Daniel Percy, 1304 Rhode Island Avenue, N. W.
798	Higgins, Roy Francis, 1703 Rhode Island Avenue, N. W.
1284	Hildenbrand, Emil J. C., 1746 K Street, N. W.
842	Hilton, James Franklin, 6319 Utah Avenue, N. W.
1093	Hixson, Clayton Howard, 1801 Eye Street, N. W.
949	Hoffman, Herman S., 1718 Rhode Island Avenue, N. W.
49	*Holden, Raymond Thomas, 3111 Sixteenth Street, N. W. Died 10/16/37.
1092	Holden, Raymond Thomas, Jr., 3111 Sixteenth Street, N. W.
1340	Hollingsworth, Russell Kuhner, 1418 Good Hope Rd., S. E. E. 1/6; S. 1/13.
336	Holmes, Mary, 1726 Eye Street, N. W.
528	Hooe, Robert Arthur, 1746 K Street, N. W.
1122	Hopkins, Gerald Arthur, 1835 Eye Street, N. W.
805	Horgan, Edmund, 1726 Eye Street, N. W.
978	Horgan, Joseph, 1801 Eye Street, N. W.
639	Hornaday, Frank Adelbert, The Mayflower Hotel.
942	Hornthal, Henry Amiss, 2100 Massachusetts Avenue, N. W.
1206	Horvath, Frank Stephen, 1801 Eye Street, N. W.
1023	Horwitz, Alec, The Farragut Medical Building.
811	Hottel, Robert Roy, 1222 Monroe Street, N. E.
379	Hough, William Hite, The Farragut Medical Building.
1369	House, Hugh Osgood, 1835 Eye Street, N. W., (Form. Assoc.) E. 3/3; S. 3/9.
464	Howard, Stanton Wren, 2725 Thirteenth Street, N. W.
825	Howe, Julian Menzo, 1309 Rhode Island Avenue, N. W.
1362	Howes, Edward L., 4622 Langdrum Lane, Ch. Ch., Md. E. 1/6; S. 2/10.
1059	Howse, Charles Perry, 1726 Eye Street, N. W.
961	Huffman, George Richard, 17 Dupont Circle, N. W.
709	Hunter, Oscar Benwood, 1835 Eye Street, N. W.
238	Hurtt, Harry, 1765 R Street, N. W.
1306	*Hutsey, Hugh Hudson, Jr., 3035 Third Street, N. W.
415	Hyde, Charles Wilbur, 1801 Eye Street, N. W.
883	Hyde, LeRoy Walter, 1801 Eye Street, N. W.
374	Hynson, Laurence Maxwell, 1464 Rhode Island Avenue, N. W.
814	Iden, Benjamin Franklin, Jr., The Farragut Medical Building.
815	Iden, John Hooe, The Farragut Medical Building.
283	Jack, William Alexander, 2350 Cathedral Avenue, N. W.
1331	Jackson, James Thomas, 303 W. King St., Leesburg, Va. Resigned 4/7/37.
193	*Jackson, Virgil B., Kedrick Apartment.
871	Jacobs, Julian Bay, 1801 Eye Street, N. W.
1265	Jacobs, Robert Samuel, The Falkstone Courts.
627	Jaeger, Henry William, 700 East Capitol Street. Died 10/21/37.
1314	Jansen, Russel Jon, 3320 Seventeenth Street, N. W.
880	Jarman, Bernard Lipscomb, 1726 Eye Street, N. W.

Seniority No.	
603	Jeffries, Joseph Arthur, Jr., 1831 G Street, N. W.
812	Jenkins, William Herndon, 1738 M Street, N. W.
1383	Johnson, Catherine Welch, 2904 Nichols Ave., S. E. E. 5/19; S. 5/28.
1110	Johnson, Don, 1835 Eye Street, N. W.
1283	Johnson, Fordyce A. Hall, 1801 Eye Street, N. W.
307	Johnson, Loren Bascom Taber, 1900 Twenty-fourth Street, N. W.
1014	Johnson, William Bridges, 3800 Yuma Street, N. W. Resigned 12/15/37.
347	Jones, Louise Tayler, McLean, Va.
173	*Jung, Sofie Amalie Nordhoff, 1868 Columbia Road, N. W.
1370	Kain, Helen Gladys, 1801 Eye Street, N. W. E. 1/6; S. 3/9.
699	Kane, Howard Francis, 1835 Eye Street, N. W.
663	Karpeles, Kate Breckenridge B., 3549 Sixteenth Street, N. W.
321	Karpeles, Simon Rufus, 3549 Sixteenth Street, N. W.
1341	Katzman, Howard, 2701 Connecticut Ave., N. W. E. 1/6; S. 1/13.
1229	Katzman, Sollie, The Farragut Medical Building.
334	Kaufman, Harry Marx, Burlington Hotel.
498	Kearney, Henry Walper, 1436 Longfellow Street, N. W.
803	Kearney, Richard Augustine, 2311 Connecticut Avenue, N. W.
1006	Keilty, Robert Andrew, 1150 Connecticut Avenue, N. W.
114	*Kelley, John Thomas, Jr., 1312 Fifteenth Street, N. W.
412	Kemble, Adam, Cecil Apartment.
1044	Kennedy, Joseph Vincent, 1835 Eye Street, N. W.
1102	Kennedy, Michael Francis, 1835 Eye Street, N. W.
1385	Kent, Ann Patrick, 2112 Wyoming Ave., N. W. E. 5/19; S. 6/2.
411	Kerr, Henry Hyland, 1744 N Street, N. W.
275	Key, Sothoron, Stoneleigh Court.
252	Keyser, Carl S., 1306 Twentieth Street, N. W.
1204	King, Allan Edward, 1801 Eye Street, N. W.
858	King, Clapham Price, 2222 Que Street, N. W.
1349	Kirchner, Raymond Charles, 3300 Sixteenth Street, N. W. E. 1/6; S. 1/14.
928	Kittredge, Elizabeth Amanda, 3906 McKinley Street, N. W.
872	Kittredge, Herman Eugene, 1835 Eye Street, N. W.
984	Knowlton, Don Swett, 1835 Eye Street, N. W.
99	*Koones, Charles Kneller, 20 Logan Circle, N. W.
1294	Kossow, Maurice J., 3206 Wisconsin Avenue, N. W.
856	Kotz, Jacob, 1835 Eye Street, N. W.
1354	Kramer, Stephen E., Jr., 713 Nineteenth St., N. W. E. 11/4/36; S. 1/21/37.
744	Krechting, Wilhelm Edmund H., 1010 East Capitol Street.
1397	Kreglow, Alan Frank, 1801 Eye Street, N. W. E. 11/3; S. 11/11.
906	Kreiselman, Joseph, 4545 Linnean Avenue, N. W.
692	Kress, Lauretta Eby, 705 Carroll Ave., Tk. Pk., Md. Tr. to Ass. 1/6/37.
1239	Krick, Jerome John, The Chastleton Hotel.
1089	Kushner, David Howard, 1301 Fifteenth Street, N. W.
1381	Lafsky, Benjamin Paul, 5421 Seventh St., N. W. E. 5/19; S. 5/27.
967	Lally, Charles Anthony, 3800 Cathedral Avenue, N. W.
806	Lally, William James, Tudor Hall.
251	Lamb, Robert Scott, Stoneleigh Court.
1387	Lambert, William Cornelius, 1526 Trinidad Ave., N. E. E. 5/19; S. 6/7.
640	Larkin, P. Edward, 1835 Eye Street, N. W.
932	Lattman, Isidore, 1835 Eye Street, N. W.
468	Lawson, Huron Willis, 1717 N Street, N. W.
902	Leadbetter, Guy Whitman, 901 Sixteenth Street, N. W.
646	LeComte, Ralph Michael, 1801 Eye Street, N. W.
1308	Lee, Allen Edward L., 1621 Connecticut Avenue, N. W.
286	Lee, Thomas Sim, 2109 O Street, N. W.

Seniority No.	
141	*Leech, Frank, 1320 Somerset Place, N. W.
857	Leffler, Harrison Hammond, The Farragut Medical Building.
938	Leibell, Casimir, 2801 Chesapeake Street, N. W.
301	LeMerle, Eugene Lyman, 2011 Que Street, N. W.
1123	Leonard, Bernard Walter, 1726 Eye Street, N. W.
1320	Levin, Isadore, 3615 Warder Street, N. W.
1252	Levitt, Louis Philip, 200 Massachusetts Avenue, N. W.
1271	Lewald, James, District Training School, Laurel, Md.
1384	Lewis, Arthur Harry, 1714 Rhode Island Avenue, N. W. E. 5/19; S. 5/28.
729	Lewis, Edward, 2820 Connecticut Avenue, N. W.
588	Lewis, Harry Samuel, 1714 Rhode Island Avenue, N. W.
1148	Lewis, Jose Guillermo, 2400 Sixteenth Street, N. W.
1392	Lichtman, Paul Abraham, 1835 Eye Street, N. W. E. 5/19; S. 8/18.
581	Lindsay, Janvier Whitton, 5524 Broad Branch Road, N. W.
512	Linville, Thomas, 2517 Fourteenth Street, N. W. Died 2/1.
636	Little, Arthur Bikle, 6911 Fifth Street, Takoma Park, D. C.
1018	Lloyd, John Robert, The Farragut Medical Building.
1393	Loftus, James Morgan, 1359 Monroe Street, N. W. E. 5/19; S. 8/19.
1051	Logan, John Adams, 6001 Nevada Avenue, N. W.
1259	Luber, Samuel, 1801 Eye Street, N. W.
242	Luckett, Llewellyn Fleet, 1419 Rhode Island Avenue, N. W.
1186	Lyddane, Eugene Stuart, 3068 Que Street, N. W.
1277	Lynch, John Joseph, 3120 N Street, N. W.
934	Lyon, James Alexander, 1801 Eye Street, N. W.
945	Lyons, John Hugh, 1344 Nineteenth Street, N. W.
303	Macatee, Henry Cook, The Farragut Medical Building.
1364	MacClatchie, Leslie Keith, 1911 R St., N. W. (Form. Assoc.) E. 1/6; S. 2/27.
713	MacDonald, Andrew Magruder, 522 Eleventh Street, N. E.
325	Machen, Francis Stanislaus, 3206 Seventeenth Street, N. W.
1000	Machlis, Samuel Arthur, 1835 Eye Street, N. W.
836	Macon, Edward Bailey, 701 East Capitol Street.
1155	Madigan, Joseph Patrick, 5115 Thirty-eighth Street, N. W.
1241	Maher, Robert Emmet, 3323 O Street, N. W.
557	Mallory, William Johnston, 1720 Connecticut Avenue, N. W.
1355	Manchester, Benjamin, 1701 Varnum Street, N. W. E. 1/6; S. 1/21.
1049	Mandelos, Nicholas A., 1029 Vermont Avenue, N. W.
1067	Manganaro, Raphael Neri, 1412 Massachusetts Avenue, N. W.
1212	Mankin, Gilbert Haven, 1726 Eye Street, N. W.
674	Mankin, J. Ward, 2030 Sixteenth Street, N. W.
760	Mann, Jesse Thomas, 906 Massachusetts Avenue, N. E.
174	*Marbury, Charles Clagett, 1015 Sixteenth Street, N. W.
1244	Marbury, John Bayne, 1726 Eye Street, N. W.
672	Marbury, William Berry, 1015 Sixteenth Street, N. W.
1213	Markwood, Emmett H., 3220 Seventeenth Street, N. W.
770	Marland, Albert Edward, 1216 Sixteenth Street, N. W.
501	Martel, Leon Alphonse, 1801 Eye Street, N. W.
1217	Martin, Wilbur Wynn, 421 B Street, N. E.
395	Martyn, Herbert E., Cumberland Apartment.
298	Mason, Elijah Lumbia, The Portner. Died 8/30/37.
784	Mason, Lyle Millan, 1835 Eye Street, N. W.
413	Mason, William Beverly, 1738 M Street, N. W.
1106	Mattare, John Joseph, 3029 Cathedral Avenue, N. W.
1198	Mattingly, Richard Vinton, 4707 Connecticut Avenue, N. W.
939	Mattingly, Thomas Ernest, 2200 Rhode Island Avenue, N. E.
1342	Maury, Franklin Hervey, 1610 Eye Street, N. W. E. 1/6; S. 1/13.

Seniority No.	
1200	Mayer, Claudius Frank, 5513 Thirty-ninth Street, N. W.
613	McCarthy, Joseph Justin, 2700 Que Street, N. W.
918	McCarthy, Lee, 1835 Eye Street, N. W.
921	McChesney, Frank Marks, 3421 Wisconsin Avenue, N. W.
138	*McCormick, John Henry, Mobile, Ala.
1169	McEnerney, Charles Harold, 2795 Twenty-eighth Street, N. W.
860	McGovern, Francis Xavier, 1835 Eye Street, N. W.
1366	McGrath, Robert Sterling, 1832 Eye Street, N. W. E. 3/3; S. 3/6.
1280	McHale, Joseph John, The Farragut Medical Building.
1267	McInerney, Michael Joseph, 5420 Connecticut Avenue, N. W.
345	McKay, James George, 2009 Columbia Road, N. W.
139	*McKimmie, Oscar Addison Mack, 1301 Massachusetts Avenue, N. W.
1165	McKinley, Earl Baldwin, 1335 H Street, N. W.
1156	McLain, George Henry, 2108 Bancroft Place, N. W.
1166	McLain, John Edward Gorsuch, 6512 Eastern Avenue, N. E. Dr. NPD 12/31/37.
1297	McLarney, Edward Patrick, 1604 Twentieth Street, N. W.
1116	McLean, Marvin McDugald, 1801 Eye Street, N. W.
779	McLendon, Preston Alexander, 2002 R Street, N. W.
919	McLeod, John Henry, 1801 Eye Street, N. W.
1036	McNitt, Harry Arnold Hull, 1835 Eye Street, N. W.
1037	McNitt, Henry John Russell, 1835 Eye Street, N. W.
966	McNulty, Richard Joseph, 1016 East Capitol Street.
993	McPeak, Edgar Meredith, 1835 Eye Street, N. W.
453	McPherson, Dorsey Mahon, 5816 Chevy Chase Parkway, N. W.
943	McQuillan, Francis, 314 B Street, S. E.
1376	Meade, Spencer Vincent, 2205 Minnesota Avenue, S. E. E. 3/3; S. 3/27.
1015	Meiman, William George, 3420 Sixteenth Street, N. W.
1193	Meloy, William Carey, 2019 R Street, N. W.
300	Merrill, Walter Hibbard, 1835 Eye Street, N. W.
765	Merritt, Edwin Atkins, 1835 Eye Street, N. W.
511	Mess, William Adam, 459 G Street, N. W.
1270	Mezitis, Fofo, 1801 Eye Street, N. W.
1207	Miller, Beveridge, 3600 Edmunds Street, N. W.
313	Miller, Gideon Brown, 1730 K Street, N. W. Died 11/1/37.
1350	Miller, William Sterling, 1131 West Virginia Ave., N. E. E. 1/6; S. 1/14.
1343	Millwater, Charles Aloysius, 1864 Wyoming Ave., N. W. E. 1/6; S. 1/13.
839	Minor, John, 1629 Twenty-first Street, N. W.
661	Mistretta, Ferdinand Henry, 1726 Eye Street, N. W.
346	Mitchell, James Farnandis, 1344 Nineteenth Street, N. W.
367	Mitchell, Joseph Ernest, 1428 K Street, N. W.
827	Moffett, Daniel Bruce, 1738 M Street, N. W.
1301	Monat, Henry Anatol, 1726 Eye Street, N. W.
963	Moody, Terrell, 500 G Street, N. E.
1126	Moore, Alexander Berkeley, 1835 Eye Street, N. W.
1117	Moore, Claude, 1801 Eye Street, N. W.
1289	Moore, Joseph Mahon, 1463 Rhode Island Avenue, N. W. Tr. to Ass. 4/7.
472	Moore, William Cabell, 1824 Massachusetts Avenue, N. W.
892	Moran, Robert Emmet, 1532 Sixteenth Street, N. W.
908	Morgan, William Arthur, 1835 Eye Street, N. W.
240	Morgan, William Gerry, 1801 Eye Street, N. W.
254	Morhart, Frederick H., 1704 Sixteenth Street, N. W.
90	*Morris, George Gideon, 305 Grand Street, Morgantown, W. Virginia.
1249	Morris, William Ross, 1801 Eye Street, N. W.
659	Morrison, Edward Lloyd, 1835 Eye Street, N. W.

Seniority No.	
823	Morse, Edward Clarke, 2022 Que Street, N. W.
167	*Morse, Edward Emery, 1814 Jefferson Place, N. W.
1162	Morse, Willis Brown, 666 Maryland Avenue, N. E.
698	Moser, James Madison, 3751 Jenifer Street, N. W.
994	Moss, Fred August, 1835 Eye Street, N. W.
1374	Moss, Leland Conner, 1710 Rhode Island Avenue, N. W. E, 1/6; S. 3/20.
279	Moulden, William Raymond, 1726 M Street, N. W.
1258	Mourot, Arthur James, 1801 Eye Street, N. W.
119	*Muncaster, Steuart Brown, The Farragut Medical Building.
388	Mundell, Joseph Joshua, 1616 Rhode Island Avenue, N. W.
789	Murphy, Christopher Joseph, 1300 East Capitol Street.
1181	Murphy, John Patrick Henry, St. Elizabeths Hospital.
433	Murphy, Joseph Alexander, 75 Observatory Circle, N. W.
1231	Murray, Raymond Wilkins, 1726 Eye Street, N. W.
1253	Myers, Walter Kendall, 2030 R Street, N. W.
1050	Nathanson, Esther Alsylvia, 1835 Eye Street, N. W.
1371	Nealon, Stephen William, Jr., 1611 Twenty-first St., N. W. E, 3/3; S, 3/9.
546	Neill, Thomas Edwin, 1824 Massachusetts Avenue, N. W.
783	Nelson, John Alfred, Rutland Courts.
645	Neuman, Lester, 3900 Fulton Street, N. W.
1119	Neviaser, Julius Salem, The Farragut Medical Building.
143	*Nevitt, James Ramsay, 1725 Lanier Place, N. W.
224	Newell, William Sawyer, 1029 Vermont Avenue, N. W.
637	Newhouse, Benjamin, 4213 Sixteenth Street, N. W.
232	Nichols, John Benjamin, 1607 Sixteenth Street, N. W.
1009	Nicholson, Margaret Mary, 1801 Eye Street, N. W.
1065	Nicklas, Edward Wilson, 2200 Nineteenth Street, N. W.
974	Nimetz, Aaron, 702 Farragut Street, N. W.
443	Norcross, Alfred Cookman, 819 Taylor Street, N. W.
888	Nordlinger, George, 1835 Eye Street, N. W.
721	Norris, Leo Brison, 3225 Eighteenth Street, N. W.
195	*Norris, Phebe Russell, The Iowa.
1019	Notes, Bernard, 1801 Eye Street, N. W.
1373	Novick, Joel Norton, 1726 Eye Street, N. W. E, 1/6; S, 3/18.
1041	Nutting, George Kegley, 1606 Twentieth Street, N. W.
1274	O'Brien, Edward Matthew, The Farragut Medical Building.
804	Oden, Robert, 1302 Eighteenth Street, N. W.
868	O'Donnell, James Francis, 4422 Watkins Avenue, Bethesda, Md.
1161	O'Donnell, Paul Joseph, 1835 Eye Street, N. W.
1296	O'Donnell, Roger, Jr., 3701 Massachusetts Avenue, N. W.
870	O'Donnell, William Francis, 2701 Twenty-eighth Street, N. W.
1084	O'Keeffee, James Archibald, 4501 Thirteenth Street, N. W.
1077	Omohundro, Miles Parker, Farmers Fork, Va.
555	Ong, Harry Alfred, 1801 Eye Street, N. W.
1150	Oppenheimer, Ella, 526 Maple Ridge Road, Bethesda, Md.
1141	*Orr, William Jennings Bryan, 1801 Eye Street, N. W.
1133	Ottenberg, Gilbert, 1835 Eye Street, N. W.
1167	Ottman, Millard Frederick, 401 Kennedy Street, N. W.
658	Pagan, Albert Elwood, 1835 Eye Street, N. W.
884	Page, Robert Massie, 1150 Connecticut Avenue, N. W.
1157	Parker, Howard Pope, 1726 Eye Street, N. W.
1298	Parker, Katherine Elizabeth, 2900 Connecticut Avenue, N. W.
1263	Parrett, Owen Samuel, 721 Maple Avenue, Tk. Pk., Md. Dropped 12/31/37.
62	*Parsons, Mary Almera, 1400 I. Street, N. W.

Seniority No.	
818	Peabody, Joseph Winthrop, 1835 Eye Street, N. W.
1128	Pedrick, Franklin Burche, 1736 Columbia Road, N. W.
1131	Pelland, Philip Oscar, 1726 Eye Street, N. W.
1160	Pelzman, Ivy Albert, 1835 Eye Street, N. W.
847	Pendexter, Ralph Stevens, The Farragut Medical Building.
418	Perkins, William Robert, 1436 Rhode Island Avenue, N. W.
820	Perry, Matthew White, 800 Sixteenth Street, N. W.
209	*Pickford, Edward F., *1838 Sixteenth Street, N. W.
1053	Pickford, Edward Morse, 1726 Eye Street, N. W.
602	Piggott, John Burr, Burlington Hotel.
1316	Pincock, Glen, 1029 Vermont Avenue, N. W.
959	Plaster, Henry Garnett, 1822 Calvert Street, N. W.
260	Polkinhorn, Henry Alexander, 1801 Eye Street, N. W.
534	Poole, Thomas Austin, 1029 Vermont Avenue, N. W.
1029	Porton, Stanley Paul, 300 Hamilton Street, N. W.
589	Potter, James Albert, 300 Second Street, S. E.
1096	Preece, Alec Ambrose, 1801 Eye Street, N. W.
262	Prentiss, Daniel Webster, 5425 Connecticut Avenue, N. W.
1147	Preston, John Francis, The Farragut Medical Building.
741	Price, Walter W., 510 Seventh Street, S. W.
424	Prosperi, Milton Hickox, 216 Eighth Street, S. E.
1081	Protas, Maurice, 1835 Eye Street, N. W.
1111	Purse, Grace Guile, 1801 Eye Street, N. W.
768	Putzki, Paul Stirling, 2015 Que Street, N. W.
1194	Quayle, Edgar Elias, 1822 Biltmore Street, N. W.
1375	Raedy, John Raymond, 21 N Street, N. W. E. 3/3; S. 3/25.
1219	Ramsey, Herbert Percy, The Farragut Medical Building.
1138	Ransdell, Robert Catheart, 1616 Rhode Island Avenue, N. W.
1243	Rathbone, Ralph Rhett, 1835 Eye Street, N. W.
643	Read, Boyd Richard, 3220 Connecticut Avenue, N. W.
901	Ready, Francis Joseph, 3325 N Street, N. W.
855	Reed, John Alton, 1720 Connecticut Avenue, N. W.
356	Reede, Edward Hiram, 1029 Vermont Avenue, N. W.
1293	Reeves, Clyde Pinckney, 1028 Connecticut Avenue, N. W.
290	Reeves, William Pinkney, Stoneleigh Court.
277	Reichelderfer, Luther Halsey, 1661 Crescent Place, N. W.
1160	Reisinger, John Charles, 1726 Eye Street, N. W.
523	Rench, Victor Bell, 1534 Sixteenth Street, N. W.
635	Repetti, Fred, 811 L Street, N. W.
869	Reuter, Frederick August, 1835 Eye Street, N. W.
685	Rice, Eugene Clarence, Jr., 1726 Eye Street, N. W.
350	Richards, Alfred, Seward Apartments.
305	Richardson, Edward Elliott, 1001 Alabama Avenue, S. E.
1367	Richtmeyer, Duane Case, 2015 Que Street, N. W. E. 3/3; S. 3/8.
1379	Richwine, Alfred Henry, 1365 Kennedy Street, N. W. E. 3/3; S. 4/14.
1390	Richwine, Barton Winters, 900 Seventeenth Street, N. W. E. 5/19; S. 7/28.
890	Riddick, Arch Lockhart, 1835 Eye Street, N. W.
457	Rives, William Cabell, 1702 Rhode Island Avenue, N. W.
821	Roberts, Edwin Ernest, 300 Longfellow Street, N. W.
882	Robey, William Isaac, Herndon, Va.
944	Rogers, Jeremiah Francis, The Farragut Medical Building.
877	Rolls, James Alfred, 4904 Georgia Avenue, N. W.
181	*Roman, Frederick Ogle, 3020 Mt. Pleasant Street, N. W.
1255	Rones, Benjamin, 1610 Eye Street, N. W.
1285	Root, Manly Bronson, National Training School for Boys.

Seniority No.	
1190	Rosser, Marion Thomas, 1726 Eye Street, N. W.
339	Rossiter, Thomas Jerome, 820 D Street, S. E.
384	Ruedy, Robert Conrad, 621 Maryland Avenue, N. E.
406	Ruffin, George Mendenhall, 1645 Connecticut Avenue, N. W. Died 5/29/37.
162	*Ruffin, Sterling, 1150 Connecticut Avenue, N. W.
1299	Ruhland, George Clemens, 2708 Thirty-sixth Street, N. W.
676	Rule, Amy Jean, 1860 Columbia Road, N. W.
924	Rusmiselle, Leslie Tanguary, 644 F Street, S. W.
1177	Rutkoski, Ignatius, The Farragut Medical Building.
1240	Ryon, William Albert, 29 Bryant Street, N. W.
420	Saffold, Guy Stark, 1726 Eye Street, N. W.
1070	Sager, William Warren, 1835 Eye Street, N. W.
111	*Saint Clair, Francis Alphonzo, 1458 Clifton Street, N. W.
861	Sanderson, Fred Roman, 1801 Eye Street, N. W.
1127	Sandler, Isadore Lewis, 1835 Eye Street, N. W.
1086	Sappington, Ernest F., 1103 Sixteenth Street, N. W.
1040	Sawyer, Leroy Lee, Jr., The Farragut Medical Building.
794	Scala, Norman Philip, Dupont Circle Apartments.
1322	Scandiffio, Mario, 1954 Columbia Road, N. W.
1236	Schneider, Antoine, 1028 Connecticut Avenue, N. W.
899	Schneider, Elwin Carl, 7508 Alaska Avenue, N. W.
747	Schoenfeld, Herbert Hermann, 1150 Connecticut Avenue, N. W.
824	Schreiber, Frederick Christian, 1710 Rhode Island Avenue, N. W.
518	Schreiber, Henry R., 1716 Rhode Island Avenue, N. W.
1334	Schultz, Mark Perry, 1603 Addison Chapel Road, N. E.
1038	Schutz, Charles Aurelius, 1801 Eye Street, N. W.
1214	Schwartzbach, Saul, 1835 Eye Street, N. W.
1225	Schwarzmann, John Ulrich, 1726 Eye Street, N. W.
1324	Seckinger, Daniel Lamont, District Building.
735	Selinger, Maurice Arthur, 1726 Eye Street, N. W.
722	Sexton, Roy Lyman, 1801 Eye Street, N. W.
166	*Shands, Aurelius Rives, 901 Sixteenth Street, N. W.
940	Shannon, William Arthur, 113 Carroll Avenue, Takoma Park, D. C.
983	Shapiro, Hyman David, 4218 Sixteenth Street, N. W.
1368	Sharpe, Francis T., 3323 O Street, N. W. E, 3/3; S, 3/8.
830	Shearer, Joseph Pardoe, The Farragut Medical Building.
926	Shepherd, Elmer Roberts, 1606 Twentieth Street, N. W.
1140	Sheppard, Ernest, 4931 Brandywine Street, N. W.
191	*Shoup, Jesse, 200 Maryland Avenue, N. E.
1026	Shugrue, John Joseph, 1150 Connecticut Avenue, N. W.
1209	Silverman, Isaac Judah, 341 Seventeenth Place, N. E.
1352	Silverman, Morris, West Clifton Terrace Apartment. E, 1/6; S, 1/18.
708	Silvester, Richard Lee, 3140 Klingle Road, N. W.
1315	Simmons, Maynard James, 1809 Kenyon Street, N. W.
519	Simpson, Charles Augustus, 1610 Twentieth Street, N. W.
1011	Simpson, George Victor, 1710 Rhode Island Avenue, N. W.
1388	Simpson, John Arthur, 721 Monroe Street, N. E. E, 5/19; S, 6/12.
799	Simms, William Bailey, 1611 Twenty-first Street, N. W.
780	Smiler, Nathan Norman, 1912 Sixteenth Street, N. W.
1356	Smith, Ashby Wade, 2900 North Capitol Street. E, 1/6; S, 1/21.
1054	Smith, Edwin Kirby, 2002 R Street, N. W.
999	Smith, Howard Lee, 1801 Eye Street, N. W.
387	Snowden, Edgar, 1712 Twenty-first Street, N. W.
1344	Snyder, Luther Henry, 5124 Chevy Chase Parkway, N. W. E, 1/6 - S, 1/13.

Seniority No.	
527	Sohon, Elizabeth, 1336 Vermont Avenue, N. W.
319	Sorrell, George Reuben, 616 F Street, S. W.
662	Sparks, William Clark, 1726 Eye Street, N. W.
1191	Speer, Alma Jane, 3225 Garfield Street, N. W.
846	Speidel, Francis George, 1835 Eye Street, N. W.
743	Spigel, Harry Alexander, 2647 Connecticut Avenue, N. W.
612	Spire, Richard Lee, 2100 North Capitol Street.
77	*Sprigg, William Mercer, 1801 Eye Street, N. W.
600	Stanley, Arthur Camp, The Farragut Medical Building.
597	Stanton, William Joseph, 3323 O Street, N. W.
186	*Stavely, Albert Livingston, 1744 M Street, N. W.
1180	Stebbing, Philip Archibald E., 800 North Carolina Avenue, S. E.
1215	Steinman, Erwin, 3500 Fourteenth Street, N. W.
584	Stephenson, Eugene Theodore, 208 Maryland Avenue, N. E.
1326	Stevenson, Leland Ernest, 1819 G Street, N. W.
1302	Stevenson, Ralph Richards, 3131 Sixteenth Street, N. W.
873	Stirling, William Calhoun, 1621 Connecticut Avenue, N. W.
1066	Stokes, Walter Raymond, 1935 Eye Street, N. W.
1247	Stone, Grace Darling Linklater, 1701 Surrey Lane, N. W.
1261	Stoughton, Amanda Louise, 1801 Eye Street, N. W. To Ass. 10/6/37
757	Stout, Joseph Duerson, 1835 Eye Street, N. W.
1351	Strawbridge, Francis Neilson, 2210 Nichols Avenue, S. E. E. 11/4/36; S. 1/15/3-.
813	Strine, Howard Francis, The Farragut Medical Building.
1218	Strine, Howard Hamilton, The Farragut Medical Building.
175	*Stuart, Albert Rhett, 1638 Connecticut Avenue, N. W.
715	Stuart, Daniel Delehanty V., Jr., The Wyoming.
149	*Stuart, James, 1349 Randolph Street, N. W.
1318	Stubbs, Donald, Alexandria, Virginia.
992	Suraci, Xaverius Charles, 620 Upshur Street, N. W.
1120	Taggart, Samuel Ross, 1726 Eye Street, N. W.
450	Talbot, John Allan, 1835 Eye Street, N. W.
660	Taylor, Eugene Arthur, 1746 K Street, N. W.
363	Taylor, Lewis Harvie, Cecil Apartment.
1211	Tegge, Charles William, 1801 Eye Street, N. W.
905	Teichmann, Walter Oskar, 1726 Eye Street, N. W.
1242	Templeton, Earl Richard, 1726 Eye Street, N. W.
585	Tewksbury, William Davis, 1835 Eye Street, N. W.
194	*Thomas, John Daniel, 1800 K Street, N. W.
552	Thomas, William Joshua Groot, 1830 K Street, N. W.
997	Thomas, William Raymond, 1830 K Street, N. W.
1317	Thompson, Alexander Contee, 1835 Eye Street, N. W.
403	Thompson, Joseph Lawn, 1735 Twentieth Street, N. W.
57	*Thompson, Millard Fillmore, 5316 Colorado Avenue, N. W. Died 12/26/37.
833	Thompson, Thomas Carlton, 1029 Vermont Avenue, N. W.
587	Tibbets, Albert Perkins, 1801 Eye Street, N. W.
1132	Tibbets, Lyman Brooke, 1726 Eye Street, N. W.
579	Titus, Elijah White, The Farragut Medical Building.
470	Tobin, Richard Francis, 122 Eleventh Street, N. W.
1182	Towner, Frank Hough, 1613 Harvard St., N. W.
947	Townsend, Maurice Lyndon, Chevy Chase Sanatorium.
816	Trible, George Barnett, 1801 Eye Street, N. W.
1108	Trinder, John Holmes, 1746 K Street, N. W.
1178	Truman, Archibald William; Long Beach, Calif. Tr. to Ass. 1/6/37.
218	Tubman, James Richard, 1750 Park Road, N. W.

Seniority No.	
1091	Twogood, Merton Elwin, 3431 Sixteenth Street, N. W.
421	Valentine, Aloysius W., 610 North Carolina Avenue, S. E.
1357	van Kinsbergen, Maurice, 1800 Connecticut Ave., N. W. E. 1/6; S 1/21.
1282	Vann, Homer King, 410 Cedar Street, N. W.
402	Vaughan, George Tully, 1718 Eye Street, N. W.
456	Verbrycke, J. Russell, Jr., The Farragut Medical Building.
1078	Virnstein, John Ellsworth, 3600 New Hampshire Avenue, N. W.
1201	Waite, Charles Paul, 4927 Brandywine St., N. W. Tr. to Ass. 12/15/37.
1245	Walker, Allan Elliott, Jr., 1835 Eye Street, N. W.
233	Wall, Joseph Stiles, 1864 Wyoming Avenue, N. W.
1286	Wallace, Clifton Robert, 5005 Illinois Ave., N. W. Tr. to Ass. 12/1/37.
1234	Walters, Willard Beecher, Cumberland Apartment.
955	Warfield, John Ogle, Jr., 1726 Eye Street, N. W.
1287	Warner, Carden Frederick, 1103 Sixteenth Street, N. W.
838	Warner, John William, 1029 Vermont Avenue, N. W.
980	Warner, Otto Nellis, Wardman Park Hotel.
263	Warren, George Walter, 1212 H Street, N. E.
1327	Warren, John Francis, 1746 K Street, N. W.
1158	Washington, Daniel Boone, 6234 Georgia Avenue, N. W.
1254	Waters, James Conrad, 417 Eighth Street, S. E.
154	*Watkins, Samuel Evans, 1448 Harvard Street, N. W.
1303	Watts, James Winston, 1028 Connecticut Avenue, N. W.
200	*Weaver, Clarence Arlington, 1614 Que Street, N. W.
817	Weems, Benjamin Francis, 1746 K Street, N. W.
1304	Weinberg, Hyman Blacker, Burlington Hotel.
1290	Weinstein, David Louis, 452 Newton Place, N. W.
1309	Weitzman, Harry Samuel, 1835 Eye Street, N. W.
1269	Weller, George Louis, Jr., 1801 Eye Street, N. W.
1246	Wells, Robert Lomax, 1726 Eye Street, N. W.
197	*Wells, Walter Augustine, 1606 Twentieth Street, N. W.
478	West, Richard Thomas, 1835 Eye Street, N. W.
1386	Wheeler, Albert McElroy, 1317 Rhode Island Avenue, N. W. E. 5/19; S. 6/4.
257	White, Charles Stanley, 1801 Eye Street, N. W.
641	White, Davenport, 2101 Connecticut Avenue, N. W.
863	Whitmore, Eugene Rudolph, 2139 Wyoming Avenue, N. W.
248	Whitson, William Essex, 1371 Monroe Street, N. W. Died 12/3/37.
323	Wilkinson, Oscar, 1408 L Street, N. W.
1151	Wilkinson, Richard Wallace, 1408 L Street, N. W.
834	Williamson, Fred Yates, 1835 Eye Street, N. W.
785	Williman, Frank Louis, 2731 Connecticut Avenue, N. W.
437	Willson, Prentiss, The Farragut Medical Building.
1278	Wissler, James Edwin, 1835 Eye Street, N. W.
558	Wolfe, James Thruston, 1610 Sixteenth Street, N. W.
1046	Wood, Harold Austin, 1029 Vermont Avenue, N. W.
1233	Wooldridge, William Norris, 3406 N Street, N. W.
340	Wynkoop, James Cartwright, 1801 Eye Street, N. W.
1176	Wynkoop, John deButts, 1801 Eye Street, N. W.
1061	Yater, Wallace Mason, Georgetown University Hospital.
407	Yates, Frederick, 929 M Street, N. W.
1237	Yesko, Stephen Aloysius, Woodley Park Towers.
1143	Young, Joseph Rogers, 1400 M Street, N. W.
431	Young, William Glenn, 1835 Eye Street, N. W.
957	Zehner, Harry, 1821 Que Street, N. W.
669	Zinkhan, Arthur Morris, 1801 Eye Street, N. W.

Associate Members

Albritton, Errett Cyril, 5437 Nebraska Avenue, N. W.
Anderson, C. L. G., 1739 Eye Street, N. W. Tr. to Ass. 12/15/37.
Andrews, John Nevins, 116 Willow Avenue, Takoma Park, Md.
Applegate, William A., 1223 Vermont Avenue, N. W.
Bailey, William Otis, Leesburg, Va.
Barbee, Robert T. J., 107 Rhode Island Avenue, N. W.
Bassett, Charles Turk, D.D.S., 1726 Eye Street, N. W.
Bingman, Carroll Edward, United States Marine Hosp., San Francisco, Cal.
Bird, Jacob Wheeler, Sandy Spring, Md.
Bobcock, Edgar Allan, Gallinger Municipal Hospital.
Branham, Sara Elizabeth, National Institute of Health.
Bronaugh, Alfred T., Phar. D., Fourteenth and Monroe Streets, N. W.
Brushart, Marshall E., D.D.S., The Farragut Medical Building.
Buckingham, David Eastburn, V.M.D., 3108 Hawthorne Place, N. W.
Bullard, Dexter Means, Rockville, Md.
Calver, George Wehnes, 2838 Twenty-eighth Street, N. W.
Calvert, Read Nathaniel, Washington Sanitarium, Takoma Park, Md.
Camalier, C. Willard, D.D.S., 1726 Eye Street, N. W.
Campbell, Nancy DuVal, St. Elizabeths Hospital. Dr. NPD 12/31/37.
Cashell, Irving M., V.M.D., 2807 Eighteenth Street, N. W.
Chapman, Katherine Antoinette, Kensington, Md.
Cline, Carl Preston, D.D.S., The Farragut Medical Building.
Coburn, Henry Clay, Jr., Walter Reed General Hospital.
Compton, Arthur George, Fort Dupont, Delaware.
Conrad, Thomas Kennerly, 5904 Connecticut Avenue, N. W.
Cook, Richard Lloyd, U. S. Veterans' Bureau Hosp., Rutland Hgts., Mass.
Cram, Eloise Blaine (Ph. D), Nat. Inst. of Health. E, 1/6; S, 1/13.
Crofton, George Henry, 940 Twenty-second Street, N. W.
Cullen, Frederick John, 4541 Chesapeake Street, N. W.
Cumming, Hugh Smith, 2219 California Street, N. W.
Dawson, Alonzo Ray, Civil Service Commission. E, 5/19; S, 8/18.
DeFarges, John Robert, D.D.S., 1726 Eye Street, N. W.
Delaney, Martin Donohue, 618 Cameron Street, Alexandria, Va.
Detwiler, Robert Henry, Colonial Village, Arl., Va. E, 5/19; E, 6/5
Dowling, George Brackett, 414 Duke Street, Alex., Va. E, 3/3; S, 5/28.
Downey, Alice Winans, The Shoreham Hotel.
Duval, Addison McGuire, St. Elizabeths Hospital.
Eisinger, Walter George, Jr., 1117 Vermont Avenue, N. W.
Eldridge, Watson William, St. Elizabeths Hospital.
Ellicott, Valcoulon LeMoyne, 6818 Glenbrook Road, Bethesda, Md.
Erikson, B. Edwin, 3726 Connecticut Ave., N. W. E, 5/19; S, 5/29.
Fadeley, George Beauregard, 6121 Lee Highway, Arlington, Va.
Glazebrook, Larkin White, 2022 P Street, N. W.
Goettling, Charles Alfred, Aldie, Va.
Grayson, Cary Travers, 1835 Eye Street, N. W.
Gurwin, Bernard Jay, 801 Fifth Street, N. E. Tr. to Assoc. 11/3/37.
Guss, Harry Templar, 1341 Montague Street, N. W.
Guynn, Ray Frederick, 1616 Sixteenth Street, N. W.
Hammond, Thomas Victor, Burley Manor, Berlin, Md.
Harron, Philip H., Phar. D., 1401 Fairmont Street, N. W.
Hatfield, Daniel Samuel, Sheppard & Enoch Pratt Hosp., Towson, Md. Died 8/5/37.
Hilton, Samuel Louis, Phar. D., 1033 Twenty-second Street, N. W.
Hoffman, Jay Louis, St. Elizabeths Hospital. E, 1/6; S, 2/20.
Hogan, John R., D.D.S., 1726 Eye Street, N. W.

Holm, George Arnold, St. Elizabeths Hospital.
Hooton, Archie Burton, Hyattsville, Md.
Hornbrook, Frank Wheeler, The Brighton.
House, Hugh Osgood, 1835 Eye Street, N. W. to Act. 3/3/37.
Howlett, Howard Henry, 928 Sligo Avenue, Silver Spring, Md.
Hrdlicka, Ales, U. S. National Museum.
Hunt, Elliott Albert, D.D.S., 1801 Eye Street, N. W.
Hutchinson, Joseph Raymond Berry, Lyon Village, Va.
Jaisohn, Philip, Media, Penna.
Karpman, Benjamin, St. Elizabeths Hospital.
Kebler, Lyman F., 1322 Park Road, N. W.
Kiessling, Alice Heyl, East Falls Church, Va.
King, Cecil Valentine, 736 S. Flower Ave., Los Angeles, Cal.
Kleinerman, Morris, St. Elizabeths Hospital.
Kline, Walter Lee, 115 Prospect Place, N. W.
Knott, Charles Otterbein, 1341 Randolph Street, N. W.
Knud-Hansen, Knud, St. Thomas, Virgin Islands.
Kress, Lauretta Eby, 705 Carroll Avenue, Takoma Pk., Md. Tr. fr. Active 1/6.
Langenstrass, Karl H., St. Elizabeths Hospital.
Lansdale, Philemon Smith, Frederick, Md.
Latane, Henry Augustine, 311 N. Washington St., Alex., Va.
Lavine, Oscar, 3628 Thirty-fourth St., Mt. Rainier, Md.
Leake, James Payton, 2733 Ontario Road, N. W.
Lloyd, Bolivar Jones, 3736 Kanawha Street, N. W.
Love, James Wilbert, 108 N. Washington St., Alexandria, Va.
Lowndes, Charles Henry Tilghman, 2100 Massachusetts Avenue, N. W.
Lynch, Daniel Francis, D.D.S., 1149 Sixteenth Street, N. W.
MacClatchie, Leslie Keith, New York City. E. Active 1/6/37.
Macnamee, Arthur Munson, (Mail returned).
Martinez, Felipe Andres, 7209 Overhill Road, Bethesda, Md.
Mason, Robert Francis, Fairfax, Va.
Maxwell, David Lander, Phar. D, 1801 Eye Street, N. W.
McCauley, David Vincent, Georgetown University E, 3/3; S, 3/8.
McCoy, George Walter, National Institute of Health.
Mead, Sterling V., D.D.S., 1149 Sixteenth Street, N. W.
Michie, Henry Clay, % The Dept. Surgeon, Manila, Philippine Is.
Milstead, Laurence Coleman, 717 N. Twenty-seventh St., Allentown, Pa.
Mitchell, Claude William, Silver Spring, Md.
Moore, Thomas Verner, 4715 Sargent Road, Brookland, D. C.
Moore, Joseph Mahon, Alexandria, Va. Tr. fr. Act. 4/7/37.
Murphy, Timothy Francis, 1673 Columbia Rd., N. W.
Norris, Frederick Walters, 1704 D Street, N. E. E, 5/19; S, 6/14.
Norton, William Harrison, 3631 Thirty-fourth Street, Mt. Rainier, Md.
Osgood, William R. (Ph.D.), 3633 Ingomar Place, N. W. E, 1/6; S, 1/13.
Pearson, Paul, Phar. D., 3814 Fulton Street, N. W.
Perry, Benjamin C., Bethesda, Md.
Pettit, Manson B., St. Elizabeths Hospital. E, 1/6; S, 2/3.
Pryor, James Chambers, 184 Columbia Hgts., Brooklyn, N. Y.
Quick, Ralph Andre, 1526 N. Edgewood St., Clarendon, Va.
Ragan, Charles Alexander, 55 John Street, New York City.
Ransom, Clarence Albert, E. Falls Church, Va.
Rapaport, Walter, Napa State Hospital, Imola, Calif.
Richardson, Harry Linwood, 1734 P Street, N. W.
Riggs, Charles Edward, 1802 R Street, N. W.
Robbins, Charles Sumner, 4900 Third Street, N. W.
Rodis, Isadore, Psychopathic Hospital, Iowa City, Iowa.
Rollings, Harry West, Jr., Wardensville, W. Va.
Rosenthal, Sanford M., 1801 Eye Street, N. W.

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THE MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA

OFFICERS, 1936-1937

President, William Mercer Sprigg; *1st Vice President*, William P. Herbst, Jr.; *2nd Vice President*, Harris I. Bierman; *Secretary-Treasurer*, Cousens B. Conklin.

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PROGRAM

Daniel L. Borden, *Chairman*; Jacob Kotz, S. A. Alexander, Donald Sheldon, G. Warren Sager.

PUBLIC HEALTH

Earl B. Tompkins, *Chairman*.

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Diphtheria Prevention, Walter A. Wells, *Chairman*; John C. Bradley, Harry F. Davies, William C. Mabry.

Maternal Welfare, Herbert P. Ramsay, *Chairman*; Howard F. Kosto, Alan A. Fraser, J. Ray Jamison, W. Preston Hayman, Radford Brown.

Mental Health, Roger S. Cohen, *Chairman*; H. D. Shapiro, J. Duncan Stuart, Antoine Schneider.

Sanitation, Eugene R. Whitmore, *Chairman*; William J. Mallory, John R. Mallory.

Tuberculosis, W. D. Tuckabery, *Chairman*; Charles P. Cohn, W. LeRoy Dunn, J. W. Peabody.

Venereal Diseases, Horatio M. Dorman, *Chairman*; Norvell Belt, Frederick A. Routzahn, James M. Pedley.

Vision, Conservation of, William Thorswall Davis, *Chairman*; Carl Henning, J. Rusty Griffith, LeRoy W. Hyde.

* Library included.

PUBLIC INFORMATION

William P. Herbst, Jr., *Chairman*; Roy Lyman Burton, Arnold McNitt, Stuart O. Foster, R. Lemuz Wells.

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Dissemination of Medical Economic Information, Arch L. Riddick, *Chairman*; Sterling Ruffin, James W. Eder, Robert E. Moran, Thomas A. Groover.

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TUMOR REGISTRY

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Neurology and Psychiatry. Herbert H. Schoenfeld, *Chairman*; James W. Watts, *Vice Chairman*; Antoine Schneider, *Secretary-Treasurer*.

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John A. Reed, *Chairman;* James A. Cahill, Jr., Radford Brown, Victor R. Alfaro, H. S. Hoffman.

PUBLIC HEALTH
Earl R. Templeton, *Chairman*
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Sanitation. Eugene R. Whitmore, *Chairman;* John B. Marbury, William J. Mallory.
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Venereal Diseases. Russell J. Fields, *Chairman;* Charles P. Howze, Alan J. Chesney, Norvell Belt.
Vision, Conservation of. William Thornwall Davis, *Chairman;* Frank D. Costenbader, J. Beaty Griffith, Ronald A. Cox.

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DELEGATES

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Neurology and Psychiatry. John P. H. Murphy, *Chairman;* Joseph L. Gilbert, *Vice Chairman;* James W. Watts, *Secretary-Treasurer.*

Roth, George Byron, 1335 H Street, N. W.
Sawtelle, Henry Fenno, Arroyo Grande, Calif.
Schulze, Gustave Hugo, Jr., Phar. D. 1828 Columbia Road, N. W.
Scott, James Foster, McLean, Va.
Simon, Alexander, 1701 Oregon Avenue, N. W.
Smith, Charles L., D.D.S., 1835 Eye Street, N. W. Dr. 12/31/37.
Smith, Chester R., D.D.S., 1801 Eye Street, N. W.
Smith, David Oscar, 1313 Gallatin Street, N. W.
Smith, Hugh McCormick, 1209 M Street, N. W.
Solnitzky, Othmer, 109 E. Thornapple St., Ch. Ch., Md. E. 3/3; S. 4/29.
Stewart, Genevieve Margaret, St. Elizabeths Hospital. E. 3/3; S. 3/10.
Stiles, Charles Wardell, Room 302, U. S. National Museum.
Stoughton, Amanda Louise, 700 Cathedral Ave., Baltimore, Md. Tr. fr. Act. 10/6.
Sutton, Richard Nevitte, Clarendon, Va.
Syme, William H., Cocoa, Florida (P. O. Box 625).
Tastet, David Walker, 1206 Floral Street, N. W.
Tennyson, Irving Alexander, Phar. D., 2816 Thirty-eighth Street, N. W.
Thompson, Richard Knight, D.D.S., 1835 Eye Street, N. W.
Townshend, Grafton Dent, Argyle Building, Kansas City, Mo.
Truman, Archibald William, 300 Bellflower Boulevard, Bellflower, Cal. Tr. to Ass. 1/6.
Vogel, Thomas Andrew, 327 E. State St., Columbus, Ohio.
Waite, Charles P., 4927 Brandywine Street, N. W. Tr. 12/15/37.
Wallace, Clifton R., 5005 Illinois Avenue, N. W. Tr. 12/1/37.
Wallace, Edward William, 5101 Washington Blvd., Arl., Va. E. 1/6; S. 1/21.
Welburn, Williamson Crothers, Ballston, Va.
White, William Alanson, St. Elizabeths Hospital. Died 3/7.
Young, Clifton Eugene, Gaithersburg, Md.

Honorary Members

Blue, Rupert (1916), 1808 Eye Street, N. W.
Braisted, William Clarence (1916), West Chester, Penna.
Fenning, Frederick A., LL.M. (1926), The Shoreham Building.
Howard, Leland Ossian (1931), 1705 Twenty-first Street, N. W.
Ireland, Merritte W. (1929), 1870 Wyoming Avenue, N. W.
Jackson, Chevalier (1932), Philadelphia, Penna.
Woodward, William Creighton (1936), Chicago, Illinois (7100 S. Shore Drive).

(Here follow 2 Gov. Exs. Nos. 34-35, folios 171-179.)

Gov. Ex. 49

Copy

The Medical Society of the District of Columbia
Washington

May 18, 1938.

Committee: Compensation, Contract and Industrial Medicine.

Dr. William M. Sprigg, Chairman, Executive Committee, The Medical Society of the District of Columbia, Washington, D. C.

Dear Doctor Sprigg:

A letter addressed to Dr. George B. Trible, under date of May 14, 1938, and sent by registered mail, follows:

"Dear Doctor Trible:

You are hereby directed to appear before the Compensation, Contract and Industrial Medicine Committee at the Medical Society Building, 1718 M Street, N. W., on Tuesday evening, May 17, 1938, at 8 P. M.

Very truly yours, (Signed) R. Arthur Hooe, M. D.,
Chairman, C. C. & I. M. Committee."

Accordingly upon convening Dr. Trible was presented with the following charges, in writing:

"Dr. George B. Trible:

The Committee hereby charges you with having violated Section 2 of Article 3 of Chapter 9 of the Constitution of the Medical Society of the District of Columbia, reading as follows:

'Every member of the Society before entering into a contract or agreement for rendering professional services shall submit a copy of his contract, if written, or a true declaration of the terms of the agreement, in writing, to the Committee on Compensation, Contract and Industrial Medicine for approval. In the event that the committee disapproves the contract, a member may appeal to the Executive Committee.'

And again Chapter 9, Article 4, Section 5, as follows:

'No member of the Society shall engage in any professional capacity whatsoever with any organization, group or individual, by whatever name called or however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, which has not been approved by the Society.

'The Executive Committee is authorized and directed to prepare an approved list of organizations, groups and individuals, by whatever name called and however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, and the same shall be kept in the office of the Secretary-Treasurer. Before any such organization, group or individual can be placed on the approved list of the Society, such organization, group or individual, or the member of the Society proposing professional relations therewith, shall *but*mit to the Compensation, Contract and Industrial Medicine Committee such evidence as the Committee or the Society may require showing the character, activities, financial condition and ethical standards of said organization, group or individual, and after considering the same, said committee shall make a report of its investigation and findings to the Executive Committee for such action as it may deem necessary.'

(Signed) R. Arthur Hooe, M. D., Chairman, Compensation, Contract and Industrial Medicine Committee."

Please find herewith attached complete transcript of the proceedings together with a true copy of a business card filed in the office at Children's Hospital.

In view of the evidence as therein set forth and in particular consideration of the correspondence therein contained as having occurred between Dr. George B. Trible and Dr. Henry Rolf Brown, Medical Director of Group Health Association, Inc., we desire to submit to your committee our verdict of guilty as charged, (possibly unwittingly), with the recommendation that such disciplinary measure be in turn recommended to the Medical Society as may seem commensurate with the gravity of the offense.

Respectfully submitted, (Signed) R. Arthur Hooe, M. D., Chairman, Compensation, Contract and Industrial Medicine Committee.

H-e.

Resolution presented at the Business Meeting of the Medical Society of the District of Columbia, in session on February 2, 1938, by Dr. Thomas E. Mattingly; ordered referred to the Executive Committee for consideration and report.

That the proper agency of the Society take immediate measures to ascertain if any member or members of the Society are party to secret understandings and unethical arrangements with Group Health Association, Inc., whereby Group Health patients are admitted to Washington hospitals and treated under the service or supervision of Medical Society members possessing hospital privileges.

Gov. Ex. 50

May 14, 1938.

Compensation, Contract and Industrial Medicine.

Dr. George B. Trible, 1801 Eye Street, N. W., Washington, D. C.

DEAR DOCTOR TRIBLE:

You are hereby directed to appear before the Compensation, Contract and Industrial Medicine Committee at the Medical Society Building, 1718 M Street, N. W., on Tuesday evening, May 17, 1938, at 8 P. M.

Very truly yours, R. Arthur Hooe, M. D., Chairman, C. C. & I. M. Committee.

H-e

Gov. Ex. 51

May 31, 1938.

Dr. George B. Trible, 1801 Eye Street, N. W., Washington, D. C.

DEAR DOCTOR TRIBLE:

You are hereby directed to appear before a meeting of the Executive Committee, on Monday evening, June 6, 1938, in the Medical Society Building, at 8 P. M.

Very truly yours, C. B. Conklin, M. D., Secretary.

C-e

Gov. Ex. 53

June 7, 1938.

DEAR DOCTOR TRIBLE:

I have been instructed by the Executive Committee to communicate with you following their meeting. As you perhaps know a meeting of the Committee was held on Monday evening, June 6. The letter which you addressed to the Committee was read.

After some deliberation the Committee voted to accept your explanation and your assurance that you would not engage in any practice contrary to the Constitution and By-laws of the Medical Society of the District of Columbia and that the matter be carried no further.

Cordially yours, Wm. Mercer Sprigg, M. D., Chairman, Executive Committee.

W-e

Dr. George B. Trible, 1801 Eye Street, N. W., Washington, D. C.

Gov. Ex. 54

November 10, 1937.

Dr. Allan E. Lee, 1621 Connecticut Avenue, N. W., Washington, D. C.

DEAR DOCTOR LEE:

Under date of November 2, 1937, and by registered mail, you were directed to appear before the Compensation, Contract and Industrial Medicine Committee of the Medical Society of the District of Columbia, Medical Society Building, 1718 M Street, N. W., at 8 P. M., November 4, 1937. You failed to appear. The committee now, therefore, charges you of having violated Chapter IX, Article III, Sections 1 and 2 of the Constitution of the Society, reading as follows:

"1. 'It is unprofessional for a physician to dispose of his services under conditions that make it impossible to render adequate service to his patient or which interfere with reasonable competition among the physicians of a community. To do this is detrimental to the public and to the individual physician, and lowers the dignity of the pro-

fession.' (Chap. III, Art. VI, Sec. 2, Principles of Medical Ethics, American Medical Association.) No member of the Society shall enter into a written, verbal, or implied contract or agreement of employment with any person, firm, corporation, association, club, lodge, or other similar organization, including the Federal and/or District Government, the terms of which contract or agreement are in violation of the principles herein expressed. The customary professional relationship of a physician to his patients, upon the basis of individual fees for services rendered, shall not be regarded as a contract within the meaning of this section."

"2. Every member of the Society before entering into a contract or agreement for rendering professional services shall submit a copy of his contract, if written, or a true declaration of the terms of the agreement, in writing, to the Committee on Compensation, Contract and Industrial Medicine for approval. In the event that the committee disapproves the contract, a member may appeal to the Executive Committee."

And again, Chapter IX, Article IV, Section 5, of the Constitution of the Society, reading as follows:

"No member of the Society shall engage in any professional capacity whatsoever with any organization, group or individual, by whatever name called or however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, which has not been approved by the Society.

The Executive Committee is authorized and directed to prepare an approved list of organizations, groups and individuals, by whatever name called and however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, and the same shall be kept in the office of the Secretary-Treasurer. Before any such organization, group or individual can be placed on the approved list of the Society, such organization, group or individual, or the member of the Society proposing professional relations therewith, shall submit to the Compensation, Contract and Industrial Medicine Committee such evidence as the Committee or the Society may require showing the character, activities, financial condition and ethical standards of said organization, group or individual, and

after considering the same, said committee shall make a report of its investigation and findings to the Executive Committee for such action as it may deem necessary."

Should you desire to defend in this matter and will so advise within 10 days, a hearing by the Committee will be arranged.

Very truly yours, R. Arthur Hooe, M. D., Chairman,
C. C. & I. M. Committee.

H-e

Gov. Ex. 66

Copy

1746 K Street, N. W.

November 10, 1937.

Compensation, Contract & Industrial Medicine.

Dr. Mario Scandiffio, 1954 Columbia Road, N. W., Washington, D. C.

DEAR DOCTOR SCANDIFFIO:

Under date of November 2, 1937, and by registered mail you were directed to appear before the Compensation, Contract and Industrial Medicine Committee of the Medical Society of the District of Columbia, Medical Society Building, 1718 M Street, N. W., at 8 P. M., November 4, 1937. You failed to appear. The committee now, therefore, charges you of having violated Chapter IX, Article III, Sections 1 and 2, of the Constitution of the Society, reading as follows:

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corporation, association, club, lodge, or other similar organization, including the Federal and/or District Government, the terms of which contract or agreement are in violation of the principles herein expressed. The customary professional relationship of a physician to his patients, upon the basis of individual fees for services rendered, shall not be regarded as a contract within the meaning of this section."

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Should you desire to defend in this matter and will so advise within 10 days, a hearing by the Committee will be arranged.

Very truly yours, R. Arthur Hooe, M. D., Chairman, C. C. & I. M. Committee.

H-e

(Sent by Registered Mail, Return Receipt, November 11, 1937.)

Gov. Ex. 71

August 8, 1938.

Dr. C. B. Conklin, Sec'y., District of Columbia Med. Soc., 1716 M St. N. W.

DEAR DR. CONKLIN:

Enclosed is a copy of my appeal to the Judicial Council of the A. M. A. from the decision of the Society to expel me from its membership.

Sincerely yours, M. Scandiffio, M. D.

1327 Eye St. N. W.

Gov. Ex. 74

November 8, 1937.

Dr. Holman Taylor, Secretary, State Medical Association of Texas, 1404 W. El Paso Street, Fort Worth, Texas.

DEAR DOCTOR TAYLOR:

For your information I would state that Group Health Association has launched out in the pursuit of activities which, we believe, cannot fail to have detrimental effect upon the profession and above all upon the public. Two members of the staff have sent letters of resignation, the acceptance of which I understand the Chairman of the Compensation, Contract and Industrial Medicine Committee, has failed to approve. My last information was that proceedings toward expelling these members had been instituted.

It may be added parenthetically that the present staff, insofar as we have information, is not at all impressive

and it is our belief that the project will have its difficulties which, however, may possibly be solved at a later date through the present administration's open approval.

With cordial regards, I am,

Sincerely yours, C. B. Conklin, M. D., Secretary.

Gov. Ex. 78

January 27, 1938.

President & Board of Directors, Garfield Memorial Hospital, Washington, D. C.

GENTLEMEN:

Miss Sarah Abbott was brought to this institution by the hospital ambulance on the evening of January 26th. She was given first aid in the Emergency Room and assigned to a bed in the hospital under the care of the staff surgeon on that service, with a diagnosis of possible fracture and possibly other injuries.

On January 27th, about noon, Dr. Raymond E. Selders, of Group Health Association, Inc., called and requested permission from the hospital authorities to take over the medical care of Miss Abbott, due to the fact that she was a member of Group Health Association, Inc.

Dr. Selders was advised that we were informed that he was not a member of the District Medical Society and he was not on our courtesy list, and therefore we could not extend him the privileges requested. It is a prerequisite with this hospital for practicing physicians, to become a member of our courtesy list, to belong to the Medical Society of the District of Columbia.

Dr. Selders contacted Dr. Henry Rolf Brown, at his office, in charge of Group Health Association, Inc., whereupon Dr. Brown called the Superintendent of this hospital and demanded a direct answer as to whether Dr. Selders would be permitted to take entire direct medical charge of the patient. He was advised that due to the fact that Dr. Selders was not on our courtesy list, we could not extend him that privilege, but Dr. Selders was advised that he would be privileged to visit and observe the patient and consult with the staff doctor in charge. Dr. Brown then advised that he was sending an ambulance for the patient to be removed from this institution, and a short time later an ambulance from Garfield Memorial Hospital arrived,

and we understand the patient was taken to Garfield Memorial Hospital.

We shall be under obligation to you for a full explanation of the circumstances under which this patient has been permitted to enter Garfield since it is not unlikely that we may be criticized for having declined to care for the patient as described when Garfield apparently is willing to take the patient as described.

Thanking you for as full an explanation of this case as you can possibly give us.

Very truly yours, Gist Blair, President.

gb/r

P. S. Copy to Medical Society, District of Columbia.

Gov. Ex. 79

Garfield Memorial Hosptal

Washington, D. C.

C. A. Aspinwall, President.

1140 15th Street, N. W.
Washington, D. C.
January 29th, 1938.

Major Gist Blair, President, Central Dispensary and Emergency Hospital, Washington, D. C.

Dear Major Blair:

Your letter of the 27th in regard to Dr. Selders' patient has been sent to me.

This patient was brought in to the Garfield Hospital by private ambulance on the 27th at 3 P. M., with a fractured leg, and was admitted to Ward H.

In regard to Dr. Selders himself, he had been given the temporary courtesy privileges in accordance with our general practice, pending report on his credentials and standing by the Staff. Upon the recommendation of the Staff these temporary courtesy privileges were withdrawn from Dr. Selders by the Board of Directors at its meeting on Tuesday the 25th instant. However, the notification of this action had not been received by Dr. Selders on the 27th when the patient in question was brought to the Hospital.

I observe that you have sent a copy of your letter under

acknowledgment to the Medical Society of the District of Columbia, and I am, therefore, sending a copy of this reply to them also.

Yours very truly, C. A. Aspinwall, President.

A/W
C. C. to Medical Society of the District of Columbia.

Gov. Ex. 85

February 26, 1937.

C-6

Dr. John B. Sears, 416 Marlborough Street, Boston, Massachusetts.

Dear Doctor Sears:

Your request for information concerning a health insurance plan was referred to this Bureau for reply.

The organization by an individual physician of a prepayment medical care plan for a group of persons has been tried for years. We do not know of any such plan that has been satisfactory. The attempt of a physician to portion off for himself a section of the medical market through a contract agreement is not conducive to good medical service. Professional excellence is dependent on constant free choice by patrons whose preference for superior work selects the more capable from among those admitted to the profession. The age old method of selecting and encouraging professional excellence is fair competition in a field of equally qualified competitors. Interference with free choice of physician is the most serious fault of methods for organizing payments for medical services.

Most of the prepayment medical care schemes are not sound, both from an economic and a medical viewpoint. Medical and hospital services cost on the average from $120.00 to $150.00 per family per year, or about $30.00 per individual. No plan for medical service can render the same services as are now given for less money. Either the amount of service will be restricted or the quality of service will deteriorate.

The incomes of the persons in the group you mentioned are evidently high enough to permit them to purchase their medical service independently without any special

paying arrangements. Practically all health insurance insurance plans, proposed or in operation, exclude persons with incomes above $3,000.

If a medical service plan is to be organized, the county medical society is the proper and logical unit to formulate such a plan. We are forwarding our publications, "Medical Service Plans," which is an outline of medical society plans, and "Organization of Medical Services," which is a description of a few of these plans. In the several localities indicated, the county medical societies have organized methods to assist persons in meeting bills for hospital and medical care. Practically all of the county medical society plans are organized on a post-payment arrangement. The collection of funds on a prepayment basis usually raises the question of complying with the insurance laws. Likewise, prepayment plans require an additional charge to the patient of about 40 per cent for administration costs and reserves, whereas, the post-payment plans require no reserves and can be administered at a cost of 10 per cent, which is absorbed by physicians and hospitals and not by the patient.

The medical society plans that are in operation demonstrate that the percentage of the population requiring any special financial arrangements for medical service is much smaller than is ordinarily reported by those urging a general transformation of methods of payment for medical service. As shown in the Organization Section of the Journal of February 20, 1937, it appears that not more than 3 to 5 per cent of the population will require the services of the medical service plan. This fact has made it clear that the problem of organizing payment for medical services should not be the dominant one in the activities of any medical society. Methods of advancing preventive medicine; caring for those with tuberculosis and cancer, and for crippled children; cooperation with the public health officials; and other methods of organizing medical services are often more important in providing for the community than special prepayment arrangements.

Sincerely yours, J. D. Laux, Bureau of Medical Economics.

JDL/BT

Sent—Organization of Medical Services, Medical Service Plans.

Gov. Ex. 88

C-6.2-105 5748

August 19, 1937.

Dr. H. H. Palmer, The White Plains Hospital Association, White Plains, New York.

DEAR DOCTOR PALMER:

The Medical Service Plan of Trinity Hosptal, Little Rock, Arkansas, is one type of several prepayment plans for medical care that has been attempted. The plan was inaugurated in 1931 and is operated by a staff of six physicians. Under the plan, six weeks of hospitalization, including operating room, anesthetics, and general nursing, as well as medical and surgical services, are offered for a rate of $2.50 a month for individuals; $2 a month for persons enrolled in groups; and $5 a month for families, regardless of size. Hospitalization is restricted to Trinity Hospital, and the medical treatment and surgical care are performed by the staff of Trinity Hospital only.

The Hospital does not appear in the American Medical Association Register, and the staff members are no longer associated with the local medical society. Solicitors are employed on a percentage basis to secure members from groups of employees in business organizations and by house-to-house canvasses.

As a general rule most of these plans do not provide the complete services claimed, nor are they supported solely by the dues collected from members. A number of independent surveys have agreed that medical services cost an average of not less than $100 per family or $25 per person. It is inconceivable that any "insurance" or prepayment plan can provide the same services for lower average charges. Either the services offered are not as complete or the quality of the services is impaired. Frequently the members who ask for services are given the complete "run of the mill" which always entails special charges for special services. It is also not uncommon to find that the dues and special charges are insufficient to support the plan, but the deficits are made up by the profits from soda fountain, magazine, or drug sales. Income from nonmembers is also an important financial item.

We are forwarding to you under separate cover some of our publications which discuss plans of this nature.

Sincerely yours, J. D. Laux, Bureau of Medical Economics.

JDL:JB
Publications sent: 4, 7, and 22—8/19/37—JB.
C-6.2-105

Gov. Ex. 89

Air Mail

C-6

November 30, 1937.

Mr. W. H. Tibbals, Executive Secretary
Utah State Medical Association
610 McIntyre Building, Salt Lake City, Utah.

DEAR MR. TIBBALS:

Doctor Bauer has referred your letter requesting information on the Clinic at Little Rock, Arkansas, and the Cooperative at Atlantic City to us for a reply.

The Medical Service Plan of Trinity Hospital, Little Rock, Arkansas is one type of several prepayment plans for medical care that have been attempted. The plan was inaugurated in 1931 and is operated by a staff of six physicians. Under the plan, six weeks of hospitalization, including operating room, anesthetics, and general nursing, as well as medical and surgical services, are offered for a rate of $2.50 a month for individuals; $2 a month for persons enrolled in groups; and $5 a month for families, regardless of size. Hospitalization is restricted to Trinity Hospital, and the medical treatment and surgical care are performed by the staff of Trinity Hospital only. As of September 1936, the number of members was reported to be 4,300.

The Hospital does not appear in the American Medical Association Hospital Register, and the staff members are no longer associated with the local medical society. Solicitors are employed on a percentage basis to secure members from groups of employees in business organizations and by house-to-house canvasses.

Concerning the Group Health Association, Inc. at Washington, D. C., the enclosed article prepared by Doctor Woodward will probably give you the information you

want. As you know, this Association was discussed rather extensively at the Secretaries' Conference.

The enclosed outlines of the Bassett Hospital Guild, Cooperstown, New York; the Economy Mutual Health Association, Economy, Indiana; and the Thompson Benefit Association, Brattleboro, Vermont, may also be of interest. There are several other plans of a similar type, but as a general rule they do not provide the complete service claimed nor are they solely supported by the dues collected from members.

A number of independent surveys have agreed that medical services cost an average of not less than $100 per family or $25 per person. It is inconceivable that any "insurance" or prepayment plan can provide the same services for lower average charges. Either the services offered are not as complete or the quality of the services is impaired. Frequently the members who ask for services are given the complete "run of the mill," which always entails special charges for special services. It is also not uncommon to find that the dues and special charges are insufficient to support the plan and that the deficits are made up by the profits from extra activities, such as soda fountain, magazine, or drug sales. Income from nonmembers is also an important financial item.

This information is given at your request and is confidential. Opinion is given merely as a business courtesy. No responsibility is to attach to the American Medical Association or its officers personally for information herein given.

Sincerely yours, J. D. Laux, Bureau of Medical Economics.

JDL:JB
enc. 4

Gov. Ex. 91

C-6.2-105
6208

January 12, 1938.

Mr Robert Browne, 301 Walsh Hall, Notre Dame, Indiana.

DEAR MR. BROWNE:

I am forwarding to you under separate cover several of our reprints in which you will find considerable information on the topics we discussed.

Two articles descriptive of the Trinity Hospital Plan appeared in the American Magazine, one in January 1935, page 52, and the other in 1937 (abstracted in the August 1937 issue of Reader's Digest, page 65). The enclosed abstract of an address by Dr. Ogden before the Association of Clinic Managers is also descriptive of the Trinity Plan. We trust that you will return this enclosure as soon as possible.

The Medical Service Plan of Trinity Hospital, Little Rock, Arkansas, is one type of several prepayment plans for medical care that have been attempted. The plan was inaugurated in 1931 and is operated by a staff of six physicians. Under the plan, six weeks of hospitalization, including operating room, anesthetics, and general nursing, as well as medical and surgical services, are offered for a rate of $2.50 a month for individuals; $2 a month for persons enrolled in groups; and $5 a month for families, regardless of size. Hospitalization is restricted to Trinity Hospital, and the medical treatment and surgical care are performed by the staff of Trinity Hospital only.

The Hospital does not appear in the American Medical Association Register, and the staff members are no longer associated with the local medical society. Solicitors are employed on a percentage basis to secure members from groups of employees in business organizations and by house-to-house canvasses.

As a general rule, most of these plans do not provide the complete services claimed, nor are they supported solely by the dues collected from members. A number of independent surveys have agreed that medical services cost an average of not less than $100 per family or $25 per person. It is inconceivable that any "insurance" or prepayment plan which must add administrative costs can provide the same services for lower average charges. Either the services offered are not as complete or the quality of the services is impaired. Frequently the members who ask for services are given the complete "run of the mill" which always entails special charges for special services. It is also not uncommon to find that the dues and special charges are insufficient to support the plan, and that deficits are made up by the profits from extra activities such as soda fountain, magazine, or drug sales. Income from nonmembers is also an important financial item.

The enclosed clipsheet from the Journal will give you some information concerning the proposal of the Committee of Physicians.

I shall appreciate receiving a copy of the paper you are preparing on the Medical Service Plan of Trinity Hospital.

Sincerely yours, J. D. Laux, Bureau of Medical Economics.

JDL:HH
2 enc.

Principles and Proposals of the Com. of Physicians JAMA 109:1816, Nov. 27, 1937.

Dr. Ogden's Address before Association of Clinic Managers (Abstract). (This to be returned to us).

Forwarded: Economics and Ethics, Medical Service Plans, Critical Analysis of Sickness Insurance, Contract Practice, Group Hospitalization.

Gov. Ex. 92

(Dr. Conklin's letter filed with other copy of this letter in M-2.1).

M-2.1
C-6.2

December 8, 1937.

Dr. C. B. Conklin, Secretary, The Medical Society of the District of Columbia, 1718 M Street, Washington, D. C.

DEAR DOCTOR CONKLIN:

In your request for "a list of local, county and state medical societies, also of individual groups of physicians, that have established a plan of prepayment medicine in the United States, with the name and address of officers in charge," you probably do not want an exhaustive list. Accordingly, the enclosed is a list of outstanding examples of each of the designated types of prepayment medical care plans, with the exception that the list of plans under the auspices of medical societies is complete.

You will notice that practically all of the medical society controlled prepayment plans are those in Washington. The

workmen's compensation law in Washington, contrary to the practice in most states, provides that the employees may be charged regular monthly payments to provide medical services for compensable injuries and diseases. This called into existence "hospital associations" which are private corporations organized to contract with employers for the provision of the necessary medical services. To meet this situation, county medical societies organized medical service bureaus which seek to return to the general medical profession that section of the medical service which has been monopolized by a few physicians and hospitals under contract with privately owned hospital associations. The medical service bureaus have striven to supplant the private contract organizations by offering free choice of physician and by insisting on a higher standard of medical service. It has been intimated that these medical service bureaus would not have been organized or would be abandoned if it were not for the peculiar features of the workmen's compensation law which permit private commercial associations to contract for and to provide medical services on a prepayment basis.

The Utah and the Fulton County (Georgia) plans and the Canadian plan are the only other known attempts of medical societies to operate prepayment plans which are still of any consequence. Several medical societies have made special prepayment arrangements for the care of indigents and for W. P. A. workers, but it is believed these are not the type of plans you have in mind.

It is difficult to know what plans may be put in the category "prepaid insurance medicine as conducted by or may be conducted by or controlled by reputable acceptable physicians." Most of the plans not under the auspices of medical societies usually are organized by lay individuals or administrators of hospitals or, even if the plan is sponsored by a group of physicians, they are not usually recognized as ethical. For example, several of the hospital associations in Washington and Oregon which are considered as private commercial associations are organized by physicians or a group of physicians. There are very few examples of this type of organization in states other than Washington and Oregon. Here in Chicago there is the National Health Service, operated by Dr. Joseph Berkowitz, which is a prepayment plan for complete medical and hospital serv-

ices. Dr. Berkowitz is also connected with the United Medical Service, Inc. and National Medicine, Inc. A somewhat similar organization is the Civic Medical Center of Chicago. There are other prepayment plans of this type operated by physicians who own substandard hospitals or clinics.

Probably what you really have in mind are the so-called private group clinics which offer a prepayment plan. In our publication "Group Practice," which is a study of these private group practice arrangements, out of 224 bona fide groups only 20 reported a prepayment arrangement. Most of these were the groups mentioned in Washington and Oregon. The following statement is taken from that report:

Comments indicated that some of these arrangements were in the nature of contracts with a single firm to care for its employees, and that the service given was confined to industrial accidents and care at the plant. That less than 9 per cent of the groups had ever tried any such plan and that 60 per cent of these were in the states in which this form of practice is highly developed furnish ample proof of a lack of any high correlation between group practice and sickness insurance, and also of the absence of any pronounced trend in that direction among groups.

We have no record of any private group of reputable physicians offering a prepayment plan. C. M. Bond, Chairman of the Administrative Committee of the Association of Clinic Managers, Sheboygan Clinic, Sheboygan, Wisconsin may be able to help you locate clinics which offer prepayment arrangements.

The other plans listed are prepayment arrangements for medical care organized for rural communities or as a special community subsidized project.

From the experiences of the existing prepayment arrangements for medical care, it appears that even the experiments controlled by medical societies or by physicians have not been entirely free from the criticisms directed at lay or politically controlled plans. The undesirable practices of advertising and solicitation have to be followed, particularly if competing plans are in existence, and the organization of a medically controlled plan encourages the organization of lay controlled plans. Whether the prepayment plan is medically, lay, or politically controlled, it still

must overcome the difficulty of calculating in advance a premium or yearly fee for the proposed medical services which will constantly expand to include new and expensive methods of treatment. Likewise, administrative expenses will be incurred regardless of the nature of the control over the plan. The diversion of receipts for administrative expenses, and the increase of demands of insured persons for services place a severe strain on the resources of any prepayment medical care plan.

We trust that this will fulfill your request, but if not please feel free to call on us again. We should like for you to keep us informed as to developments and to make a copy of any of your findings for our information.

Sincerely yours, J. D. Laux, Bureau of Medical Economics.

JDL:HH
1 enc.

Gov. Ex. 93

C-6.2-72
M-2.1-470

January 18, 1938.

Dr. A. C. Christie, 1835 Eye Street, N. W., Washington, D. C.

DEAR DOCTOR CHRISTIE:

The information we have on the Stanocola Employees' Medical and Hospital Association of Baton Rouge, Louisiana is not particularly up to date as there has been very little interest in this plan since 1933. You will find a description of the Association in a Julius Rosenwald Fund publication entitled "Group Payment for Medical Care," prepared by C. R. Rorem and J. H. Musser, published in 1932. The following is abstracted from this publication and from the material we have in our files.

The Stanocola Employees' Medical and Hospital Association was organized in 1924 to furnish designated medical and hospital services for employees of the Standard Oil Company of Louisiana and their dependents. Fees of $3 monthly are collected through payroll deductions from members of the Association. The Association is empowered

to levy three special assessments of $3 each during any one calendar year. In 1930 the Association was incorporated under the laws of the State of Louisiana as a nonprofit corporation with authorized capital of $100,000 consisting of 5,000 shares of stock at $20 par value. At the time of incorporation the ownership of a share of stock was made a condition of membership, payment being made in eight monthly installments of $2.50 each. The funds obtained by sale of stock were used to purchase a former private building for use as a clinic, and equipment.

Membership in the Association is voluntary and is limited to the white employees of the Standard Oil Company. Approximately 75 per cent of the white employees, around 2,000 annually, are members of the Association. The affairs of the Association are managed by a Board of Directors elected from the membership.

Services are provided by a staff of seven physicians (a surgeon, an eye, ear, nose and throat specialist, and five general practitioners). The clinic personnel also includes two graduate nurses, a telephone operator, and a caretaker.

Members of the Association are entitled to the services of the medical staff in their homes, in the clinic, and in two local hospitals where the Association physicians are staff members. A maximum of $250 is allowed for hospitalization and special nursing in any one illness. Hospitalization is paid for by the Association at ward rates in two local hospitals. X-ray and radium services are not provided. Special charges are also made for prescribed medicines and for drugs required to an unusual degree in the course of treatment. A mileage charge is made for house calls beyond a seven mile radius from the clinic. Eye glasses and artificial appliances are not supplied. Obstetrical cases are not hospitalized except for special conditions. Dentistry is not included.

Practically all of the expenses of the Association, which were above $90,000 in 1931, are said to be secured through the $3 monthly payroll deduction from members. Tables showing the kind and volume of services are given for each year up to 1931 in the publication mentioned above.

The records of the clinic are said to be incomplete and inadequate, and the physicians are asked to work from twelve to fourteen hours a day and then to be on call at night. On the other hand, the medical staff receives salaries from $6,000 to $9,000 which are said to be far above

the income of the other practitioners in the community. Likewise, each member is entitled to one day's full absence from work each week, and a two weeks' vacation annually.

In 1929 the East Baton Rouge Parish Medical Society declared that the contracts entered into by the doctors with the Stanocola Employees' Medical and Hospital Association were unethical, and that a continuation of the contracts would be prima facia evidence that membership in the Society would no longer be desired by those physicians. An appeal to the courts of Louisiana by the physicians concerned for an injunction to restrain the Society from such action was denied.

If we are successful in obtaining some information concerning the present status of the Association, we shall communicate with you again.

The workmen's compensation law in Washington, contrary to the practice in most states, provides that the employees may be charged regular monthly payments to provide medical services for compensable injuries and diseases. This called into existence "hospital associations" which are private corporations organized to contract with employers for the provision of the necessary medical services. To meet this situation, county medical societies organized medical service bureaus which seek to return to the general medical profession that section of the medical service which has been monopolized by a few physicians and hospitals under contract with privately owned hospital associations. The medical service bureaus have striven to supplant the private contract organizations by offering free choice of physician and by insisting on a higher standard of medical service.

The King County Medical Service Bureau of Seattle, Washington is one of ten bureaus that have been developed by county medical societies in Washington as a means of meeting this situation created by the workmen's compensation law. The King County Medical Service Bureau is a voluntary association of physicians who agree to furnish services to the King County Medical Service Corporation. The King County Medical Service Corporation is a charitable corporation and contracts with employers to provide medical and surgical care, hospitalization, nursing, and ambulance services for its employees. The Corporation in turn forms an agreement with the physicians of the

King County Medical Service Bureau to provide the medical and surgical services; and with hospitals, druggists, and firms engaged in furnishing ambulance service to provide hospitalization, medicines, and ambulance service.

As to the method of operation, the Medical Service Corporation sells two contracts: a Medical Aid Contract which provides medical care for employees injured in the course of their employment, and a Standard Group Contract which provides care for sickness and nonoccupational injuries. In King County, only employees earning less than $1,800 annually are allowed to participate and at present about 25,000 such employees are under contract with the King County Medical Service Corporation.

The Department of Labor and Industries classifies all industries in the State and stipulates the premiums which range from 1¢ to 15¢ for each day worked by an employee, to be paid into the Medical Aid Fund. One half of the premiums are paid by the employer and one half by the employees. The medical service corporations or "hospital associations" receive 89 per cent of the premiums for the employees covered by medical aid contracts, the remainder going to the State for administration of the Act and for the care of employees in need of treatment after the expiration of the contracts. The Department of Labor and Industries also draws up a maximum fee schedule for all services to be rendered employees under medical aid contracts. Copies of the fee schedule and the classifications and rates may be obtained by writing to the Department of Labor and Industries.

The Standard Group Contract is paid for by the employee who authorizes his employer to deduct the premium from his wages. The premiums for the Standard Group Contract vary, but range from $1.25 to $1.75 monthly for each employee. Some "Hospital Associations" write a "Full Coverage" contract which includes benefits for dependents. For the services under the Standard Group Contract, a fee schedule is agreed upon between the participating physicians and the medical service corporation. In most corporations the French Unit System is used to divide the monies received in order to avoid any difference in the amounts paid to the physicians rendering service to patients under workmen's compensation (the Medical Aid Contract) and

to physicians rendering general medical or nonoccupational service (the Standard Group Contract).

The enclosed list of bureaus and hospital associations in Washington (and in Oregon where a similar situation exists) and tables showing some operating statistics may be of interest to you.

From an examination of the contracts it is apparent that the numerous exceptions and limitations leave large gaps in the medical services provided. As a general rule, most prepayment contract medical care plans give the impression of providing complete medical services for the small fee charged while, as a matter of fact, numerous services are excluded and special charges are often made. It has been intimated that the contract arrangements through medical service bureaus controlled by county medical societies would not have been undertaken or would be abandoned if it were not for the peculiar features of the workmen's compensation law which permits private commercial associations to contract for and to provide medical services on a prepayment basis. Apparently, the medical society experiments with prepayment medical care plans have not been entirely free from the criticisms directed at lay or politically controlled plans. One investigator (Dodd, W. F.: Adminstration of Workmen's Compensation, Commonwealth Fund, New York, 1936) concludes, "The medical service [in Washington] appears to be inadequate under the contract system, however administered."

We trust that the above information will be of assistance.

Sincerely yours, J. D. Laux, Bureau of Medical Economics.

JDL:HH 1 enc.

Gov. Ex. 94

Drs. Groover, Christie and Merritt, 1835 Eye Street, N.W., Washington, D. C.

Telephones National 1472, 1473 and 1474.

Thos. A. Groover, M. D., Arthur C. Christie, M. D., Edwin A. Merritt, M. D., A. B. Moore, M. D., Fred O. Coe, M. D., Edgar M. McPeak, M. D., I. Lattman, M. D., R. Rhett Rathbone, M. D., James E. Wissler, M. D.

L. M. Christie, D. D. S., Associate in Dental Diagnosis.

January 13, 1938.

Dr. R. G. Leland, American Medical Association, 535 N. Dearborn St., Chicago, Illinois.

DEAR DOCTOR LELAND:

I wonder if you could give me some information about the Stanacola group in New Orleans and the Seattle group plan.

The Home Owners' Loan crowd here are using these two groups as shining examples of the benefits of health insurance and none of us know enough about them to answer their arguments.

Any information you can give me will be greatly appreciated.

As ever, with kindest regards,

Very sincerely yours, A. C. Christie, M. D.

nce:ga.

Received, Bureau of Medical Economics, Jan. 15, 1938. Disposition C-6. 2-72.

Dr. Hathaway's letter filed with other copy of our reply in M-2.1 Correspondence

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Gov. Ex. 95

M-2.1
C-6.2

February 4, 1938.

Dr. Robert J. Hathaway, 636 Church Street, Evanston, Illinois.

DEAR DOCTOR HATHAWAY:

Our reply to your request for information concerning group medical care plans has been delayed because of the

press of work in preparation for the nationwide study of the need for medical care which has been inaugurated recently by the American Medical Association through its county medical societies.

Only a few medical societies have undertaken the operation of prepayment medical care plans. Practically all of these plans are in the State of Washington where the Workmen's Compensation Law permits the hospital associations, which are private corporations, to contract with employers for the provision of medical services for employees. To return to the general medical profession that section of the medical services which was being monopolized by a few physicians and hospitals under contract with these privately owned hospital associations, ten county medical societies in Washington have organized medical service bureaus. These medical service bureaus offer a contract similar to that of the hospital associations, but they have striven to supplant the private contract organizations by offering free choice of physician and insisting on a higher standard of medical service. A medical service bureau organized by the Utah State Medical Association in 1934 but which is now inactive, and a medical service bureau organized by the Fulton County Medical Society (Atlanta, Georgia) in 1934 and which has 778 active members at the present time, are the only other examples of prepayment plans sponsored by medical societies.

You may have in mind prepayment plans sponsored by groups of physicians, such as the Ross Loos Clinic in California, or the Civic Medical Center in Chicago. Such plans are usually in the nature of a contract with a single firm to care for its employees. The enclosed typewritten copy of a circular for the Ross Loos Clinic will give you an idea of the plan. A pamphlet entitled "Ross Loos Clinic" published by the Civil Service Assembly, 850 East 58th Street, Chicago may be purchased for 40 cents.

Other types of prepayment arrangements are organized by lay individuals, by hospitals, or as a special community subsidized project.

As a general rule, most prepayment contract medical care plans give the impression of providing complete medical services for the small monthly or annual fee charged. After an examination of the contract, it will usually be found that numerous services are excluded and that special charges are

made. It is inconceivable that any organizational arrangement of medical services can lower the average annual cost of about $25 to $30 per person except by excluding many services or by offering medical services of an inferior quality.

In regard to your specific questions, a different answer would have to be given for practically every plan. For example, in the Ross Loos Plan, practically no limit is set on house calls except "the subscriber will not demand house calls to be made when he is in such physical condition that a visit to the office during regular office hours would not be detrimental to his wellbeing." In the Fulton County Plan, there is apparently no limit on house calls. The Ross Loos Plan provides 90 days of hospitalization in a ward. The Fulton County Plan provides no hospitalization although visits made to the hospital by the participating physicians are paid for. The exemptions of diseases and conditions usually make quite a sizeable list varies with each contract. The payment of participating physicians also follows a variety of arrangements. The medical service bureau plans use the French Unit System whereby each service represents a certain number of units and an agreed amount is paid for each unit. The medical service plan in Fulton County pays the participating physicians by prorating the net income for each month, according to the bills received. Under the clinic plans the participating physicians may receive a salary or a percentage of the net income.

No ethical plan has evolved from the studies of the Committee on the Costs of Medical Care.

Under separate cover we are forwarding to you a number of our publications in which you will find considerable discussion of prepayment plans and the principles which should be observed by such plans. Notice in particular the requirements for free choice of physician and for payments in cash directly to the patient.

Sincerely yours, J. D. Laux, Bureau of Medical Economics.

JDL:HH
1 enc.

Gov. Ex. 96

C-6.2-105
6811

July 8, 1938.

Dr. Edward W. Rowe, Lincoln Clinic, Stuart Building, Lincoln, Nebraska.

DEAR DOCTOR ROWE:

The Medical Service Plan of Trinity Hospital, Little Rock, Arkansas, is one type of several prepayment plans for medical care that have been attempted. The plan was inaugurated in 1931 and is operated by a staff of six physicians. Under the plan, six weeks of hospitalization, including operating room, anesthetics, and general nursing, as well as medical and surgical services, are offered for a rate of $2.50 a month for individuals; $2 a month for persons enrolled in groups; and $5 a month for families, regardless of size. Hospitalization is restricted to Trinity Hospital, and the medical treatment and surgical care are performed by the staff of Trinity Hospital only.

The Hospital does not appear in the American Medical Association Register, and the staff members are no longer associated with the local medical society. Solicitors are reported to be employed on a percentage basis to secure members from groups of employees in business organizations and by house-to-house canvasses.

The Trinity Hospital Plan has sold about 2,000 contracts covering about 5,000 people. Subscribers include wealthy persons in the community as well as factory employees, and persons from towns as far as 140 miles from Little Rock. We have not been able to obtain any financial information concerning the plan other than that the premiums received from members paid 56.3 per cent of the charges for similar services rendered private patients which is approximately the same as if the members of the staff had accepted a 40 per cent reduced fee schedule. Part of this reduction is said to be made up because most of the credit losses ordinarily incurred in private practice are reduced. The staff members have also been willing to participate in such a plan because additional income for special services could be secured from subscribers to the plan. Likewise, staff members do not provide free medical services for persons in the community.

The objections to such an arrangement are the same as the objections to other types of contract practice which prohibit free choice of physician and rely on advertising or solicitation to secure patients. Aside from violating ethical principles which are designed to promote good medical services for the patient, such arrangements do not lower the cost of medical care. The advertised rate does not, as a general rule, provide for complete medical and hospital services and the plan is not supported solely by the dues collected from members. No insurance or prepayment plan which must add administrative costs can provide the same average services now received in private practice for lower than average charges. Either the services offered are not so complete or special charges are made for numerous services. It is also not uncommon to find that deficits are made up by the profits from extra activities such as soda fountain, magazine, and drug sales or income from non-members.

There are several possible arrangements to assist persons to meet medical or hospital bills which avoid most of the objections to contract arrangements for such services. The essential feature of these plans is that the benefits are payable in cash. A number of mutual benefit associations and community health associations have been operating satisfactorily on a cash benefit basis. The July 2, 1938 issue of the Journal, page 59, has the report of the reference committee on the cash payments for medical services which was adopted by the House of Delegates. Under separate cover we are forwarding to you some of our publications in which the questions indicated before are discussed fully.

This information is given at your request and is confidential. Opinion is given merely as a business courtesy. No responsibility is to attach to the American Medical Association or its officers personally for information herein given.

Sincerely yours, J. D. Laux, Bureau of Medical Economics.

JDL:MW

Sent under separate cover 7-13-38: Economics and Ethics of Medicine, Medical Service Plans, Organization of Medical Services, Contract Practice. C. E. J.

Gov. Ex. 99

C-6. 2-105.

July 6, 1938.

Dr. W. H. Lipman, Medical Director Industrial Relations Department, Swift and Company, Union Stock Yards Chicago.

DEAR DOCTOR LIPMAN:

The Medical Service Plan of Trinity Hospital, Little Rock, Arkansas, is one type of several prepayment plans for medical care that have been attempted. The plan was inaugurated in 1931 and is operated by a staff of six physicians. Under the plan, six weeks of hospitalization, including operating room, anesthetics, and general nursing, as well as medical and surgical services, are offered for a rate of $2.50 a month for individuals; $2 a month for persons enrolled in groups; and $5 a month for families, regardless of size. Hospitalization is restricted to Trinity Hospital, and the medical treatment and surgical care are performed by the staff of Trinity Hospital only.

The Hospital does not appear in the American Medical Association Register, and the staff members are no longer associated with the local medical society. Solicitors are reported to be employed on a percentage basis to secure members from groups of employees in business organizations and by house-to-house canvasses.

The Trinity Hospital Plan has sold about 2,000 contracts covering about 5,000 people. Subscribers include wealthy persons in the community as well as factory employees, and persons from towns as far as 140 miles from Little Rock. We have not been able to obtain any financial information concerning the plan other than that the premiums received from members paid 56.3 per cent of the charges for similar services rendered private patients which is approximately the same as if the members of the staff had accepted a 40 per cent reduced fee schedule. Part of this reduction is said to be made up because most of the credit losses ordinarily incurred in private practice are reduced. The staff members have also been willing to participate in such a plan because additional income for special services could be secured from subscribers to the plan. Likewise, staff

members do not provide free medical services for persons in the community.

The objections to such an arrangement are the same as the objections to other types of contract practice which prohibit free choice of physician and rely on advertising or solicitation to secure patients. Aside from violating ethical principles which are designed to promote good medical services for the patient, such arrangements do not lower the cost of medical care. The advertised rate does not, as a general rule, provide for complete medical and hospital services and the plan is not supported solely by the dues collected from members. No insurance or prepayment plan which must add administrative costs can provide the same average services now received in private practice for lower than average charges. Either the services offered are not so complete or special charges are made for numerous services. It is also not uncommon to find that deficits are made up by the profits from extra activities such as soda fountain, magazine, and drug sales or income from non-members.

Under separate cover we are forwarding to you some of our publications in which the questions indicated above are discussed fully. You may also be interested in the clipsheets from the Journal which describe the Spaulding Bakery Plan at Binghamton, New York which is gaining a reputation as a satisfactory method of assisting employees to meet medical and hospital bills. The essential feature of such a plan is that the benefits are payable in *cash*, thereby avoiding the objections to plans which attempt to contract for medical or hospital services "in kind." Two statements prepared for the House of Delegates which are also being forwarded to you discuss the principle of cash payment of benefits for medical and hospital services which now has the approval of the House of Delegates of the American Medical Association.

The delay in answering your letter was unavoidable. If we can be of any further assistance to you in this matter we shall be glad to hear from you again or to have you call to see us.

Sincerely yours, J. D. Laux, Bureau of Medical Economics.

JDL:HH.

Sent: Clipsheets JAMA June 10, 1933, p. 1870. C-6.1-501. June 6, 1936, p. 1992. C-6.1-501. Medical Service Plans.

Contract Practice. Group Hospitalization Insurance (1938) Pamphlet. Study and Supply of Med. Care (1938) Pamphlet.

Gov. Ex. 101

C-6.2-105
6850.

July 12, 1938.

Dr. James B. Stanford, 899 Madison Avenue, Memphis, Tennessee.

DEAR DOCTOR STANFORD:

Doctor West referred your letter to us a week ago but our reply has been delayed because of the press of work in connection with the Study of Medical Care.

The Medical Service Plan of Trinity Hospital, Little Rock, Arkansas, is one type of several prepayment plans for medical care that have been attempted. The plan was inaugurated in 1931 and is operated by a staff of six physicians. Under the plan, six weeks of hospitalization, including operating room, anesthetics, and general nursing, as well as medical and surgical services, are offered for a rate of $2.50 a month for individuals; $2 a month for persons enrolled in groups; and $5 a month for families, regardless of size. Hospitalization is restricted to Trinity Hospital, and the medical treatment and surgical care are performed by the staff of Trinity Hospital only.

The Hospital does not appear in the American Medical Association Register, and the staff members are no longer associated with the local medical society. Solicitors are reported to be employed on a percentage basis to secure members from groups of employees in business organizations and by house-to-house canvasses.

The Trinity Hospital Plan has sold about 2,000 contracts covering about 5,000 people. Subscribers include wealthy persons in the community as well as factory employees, and persons from towns as far as 140 miles from Little Rock. We have not been able to obtain any financial information concerning the plan other than that the premiums received from members paid 56.3 per cent of the charges for similar services rendered private patients which is approximately the same as if the members of the staff had accepted a 40

per cent reduced fee schedule. Part of this reduction is said to be made up because most of the credit losses ordinarily incurred in private practice are reduced. The staff members have also been willing to participate in such a plan because additional income for special services could be secured from subscribers to the plan. Likewise, staff members do not provide free medical services for persons in the community.

The objections to such an arrangement are the same as the objections to other types of contract practice which prohibit free choice of physician and rely on advertising or solicitation to secure patients. Aside from violating ethical principles which are designed to promote good medical services for the patient, such arrangements do not lower the cost of medical care. The advertised rate does not, as a general rule, provide for complete medical and hospital services and the plan is not supported solely by the dues collected from members. No insurance or prepayment plan which must add administrative costs can provide the same average services now received in private practice for lower than average charges. Either the services offered are not so complete or special charges are made for numerous services. It is also not uncommon to find that deficits are made up by profits from extra activities such as soda fountain, magazine, and drug sales or income from nonmembers.

There are several possible arrangements to assist persons to meet medical or hospital bills which avoid most of the objections to contract arrangements for such services. The essential feature of these plans is that the benefits are payable in cash. A number of mutual benefit associations and community health associations have been operating satisfactorily on a cash benefit basis. The July 2nd, 1938 issue of the Journal, page 59, contains the report of the reference committee on cash payments for medical services which was adopted by the House of Delegates. Under separate cover we are forwarding to you some of our publications in which the questions indicated before are discussed fully.

This information is given at your request and is confidential. Opinion is given merely as a business courtesy. No responsibility is to attach to the American Medical As-

sociation or its officers personally for information herein given.

Sincerely yours, J. D. Laux, Bureau of Medical Economics.

JDL:CEJ

Sent under separate cover 7-13-38: Economics and Ethics of Medicine, Medical Service Plans, Organization of Medical Services, Contract Practice.

Gov. Ex. 125

Western Union

PHF9 12 PD Chicago, Illinois, April 21, 1938.

Dr. A. T. Talley,
1307 Medical Arts Building,
Houston, Texas.

Your telegram has been referred to the Chairman of the Judicial Council.

Olin West.

Gov. Ex. 134

Excerpt from minutes of Board of Trustees of A. M. A. dated June 6-10, 1937.

Cooperatives: Doctor Woodward reported that in February of this year, employees of the Home Owners' Loan Corporation, which has about 2,000 employees in Washington and a number of regional offices throughout the country, organized a cooperative medical service association in Washington, called the Group Health Association, Inc., and financed in part at least by the HOLC, the purposes of which are set forth in its articles of incorporation as follows:

To provide, without profit to the corporation, for the service of physicians and other medical attention and any and all kinds of medical, surgical and hospital treatment to the members hereof and their dependents, and the con-

struction and operation of a clinic and medical office building, and the construction and operation of a hospital in the manner permitted by law, for the members hereof and their dependents, and the operation of a drug store or pharmacy, and the providing of nurses and of drugs and remedies for the members hereof and their dependents, and the furnishing of all forms of hospital service and attention to the members hereof and their dependents, and in general the giving to the membership of this association and their dependents of all forms of care, treatment or attention that may be required by the sick or in the prevention of disease.

To these ends the said corporation shall have the right of acquiring, taking, receiving and holding all manner of land, tenements, leaseholds, or any other kind of real estate or any interest therein, and of owning, improving and disposing of same; borrowing money and securing the same by mortgage upon its real estate and otherwise, and holding and owning any kind of property, goods and chattels acquired by it in any manner, and of employing and disposing of the same for the purposes for which the corporation is formed and to further its general welfare; and of entering into, making, performing, and carrying out contracts of every sort and kind which may be necessary or convenient for the business and purposes of this corporation and which may be permitted by law.

The foregoing enumeration of specific powers shall not be deemed to limit or restrict in any manner any general powers of the corporation and the enjoyment and exercise thereof as conferred by the laws of the District of Columbia upon corporations organized under the provisions of the law for the purposes stated, but this corporation shall have the power to do all and everything necessary, suitable and proper for the accomplishment of any of the purposes, or the attainment of any of the objects, or the furtherance of any of the powers herein set forth, so far as the same may be permissible under the law, and provided that the same may not be inconsistent with the laws under which this corporation is organized.

The corporation shall have no capital stock but shall be an association controlled by its members. The membership of the corporation shall be composed solely of employees of any branch of the United States Government service

other than officers and enlisted men of the United States Army and Navy. All members shall have equal rights of membership and those whose dues have been paid at the time, if ever, liquidation of its affairs takes place shall have the right to share in the distribution of its assets.

Doctor Woodward stated that he had been informed that this undertaking is financed by a government loan and that the President has given his approbation to the plan. If it is successful, similar organizations will probably be created in other departments of the government. Doctor Woodward quoted the following from a notice that the Group Health Association, Inc., sent out in April:

Under the terms of the contract between your Association and the Home Owners' Loan Corporation, two persons are selected by the Federal Home Loan Bank Board who shall serve on the Board of Trustees.

He stated he had attempted to procure a copy of the contract, to see what they propose to do, but had not succeeded.

Doctor Woodward called attention to the fact that while the Group Health Association, Inc., exists now only among members of the Home Owners' Loan Corporation, its charter does not limit its membership to employees of that corporation. He understood that the loan for the purpose of organizing this corporation was based in part on the fact that the corporation will render service to the HOLC. In his investigation he had inquired of a representative of the Home Owners' Loan Corporation whether medical care for government employees did not have to be rendered by the United States Public Health Service and that the response was, "No; the Home Owners' Loan Corporation can employ whomsoever it sees fit." The entire plan, in Doctor Woodward's opinion, will put the Group Health Association, Inc., into the corporate practice of medicine.

Doctor Woodward stated that he called attention to the fact that if the government can lend money to a medical cooperative in the District of Columbia, it can lend money anywhere in the United States for the same purpose, and that if it is generally known that loans of this kind are possible, the government will be put under pressure to make loans everywhere.

On motion of Doctor Booth, seconded by Doctor Fenton and carried, the Board voted to refer this matter to the Executive Committee.

Gov. Ex. 151

Copy

Nov. 25, 1938.

Dr. Walter A. Coole, Secretary
Harris County Medical Society,
818 Hathaway Street,
Houston, Texas.

DEAR DR. COOLE:

I am acknowledging receipt of your letter of November 24, to Dr. Taylor, enclosing minutes of a special business meeting of your Society, November 23, at which meeting charges of unethical practice against Dr. Raymond E. Selders, now in Washington, D. C., were dismissed without prejudice.

I note that Dr. Selder's check for dues for 1938 was accepted, and that Dr. Selders is a member in good standing in your Society.

I note, further, that the request of Dr. Selders for a transfer to the Medical Society of the District of Columbia, Washington, D. C. will be voted upon at your next regular business meeting, November 30, and your unofficial opinion is that the transfer will be granted at that time. I have considered your letter an official notification of the close of this case, as far as Harris County Medical Society is concerned, and I am so notifying Mr. Freeman, our General Attorney, whose advice has been consulted in the matter, and Dr. Olin West, secretary of the American Medical Association.

I have written in Dr. Taylor's absence from the office.

With best wishes, I am

Sincerely yours, R. B. Anderson, M. D.

RBA/LMT
cc—Mr. C. T. Freeman, Dr. Olin West.

Gov. Ex. 169

C-6.1 February 19, 1937.

Dr. A. P. LaFrance, 634 Main Street, Laconia, New Hampshire.

DEAR DOCTOR LAFRANCE:

Your inquiry concerning the proposal of some people in your locality to start a cooperative scheme has been referred to the Bureau of Medical Economics.

There have been a very large number of similar proposals within the last year; they have come from nearly all sections of the country and have been especially numerous in some states. Although we have kept a close watch of all such developments, we do not know of a single one that has actually gone into operation.

The fact is that the distribution of medical service is not suited to cooperative methods. Even in nations where the cooperative movement has its greatest strength, all efforts to apply such fundamental principles of cooperation as the "patronage dividend" and "wholesale buying" have proved impossible. Because of the difficulty in applying a real cooperative scheme, cooperatives, both in this country and in Europe, have attempted to utilize their organizations and financial resources to set up plans of contract practice. This is probably what is taking place in your district.

We are enclosing a description of some plans in Binghamton, New York that avoid some of the evils of contract practice. These may be of interest to you and of some value in the way of a suggestion as to how to meet the local situation.

The most important thing in all these plans is to see that the entire situation is handled only through the local medical society. We are therefore forwarding a carbon copy of this letter to Dr. C. S. Abbott, Secretary of the Belknap County medical society, for his inforr ation, should the county medical society care to take any action in the matter.

Sincerely yours, A. M. Simons, Assistant Director, Bureau of Medical Economics.

AMS:HEH Encs. 2

CC: Dr. C. S. Abbott, Sec'y., Belknap County Medical Ass'n., 8 Academy Street, Laconia, New Hampshire.

Enc. "Freedom of Choice of Physician in Industrial Medicine" from "Medical Economics", Vol. 106, No. 23, pp. 1991-1992 and "A New Experiment in Indusfrial Medicine" from "Medical Economics" 100:23, 1869.

Gov. Ex. 170

Dr. Leland.

Excerpt from letter dated 2/10/37 received by Subscription Department from A. P LaFrance, M. D., Laconia, N. Y.

"There is a small group of men in a neighboring village who are starting a cooperative scheme to aid themselves in

major illnesses. I would appreciate any and all information which you may send me on such group plans."

2/18/37 P. P.

Gov. Ex. 171

C-6.1 February 19, 1937.

Dr. C. S. Abbott, Secretary, Belknap County Medical Association, 8 Academy Street, Laconia, New Hampshire.

DEAR DOCTOR ABBOTT:

We are enclosing a copy of a letter sent in reply to an inquiry by Doctor LaFrance. We do this because we feel that any action in relation to such a scheme as is proposed should come through the county medical society.

If there is any further information or help that you think we can give, be sure we will be glad to extend any assistance in our power.

Sincerely yours, A. M. Simons, Assistant Director, Bureau of Medical Economics.

AMS:HEH Enc. 1

(Here follows Gov. Ex. 172.)

Gov. Ex. 173

C-6.2 March 25, 1937.

Dr. J. Fred Adams, c/o Macon County Clinic, Montezuma, Georgia.

DEAR DOCTOR ADAMS:

The problem you present in regard to furnishing medical service on a prepayment plan for a group of employees is a familiar one, but, unfortunately, is one for which no satisfactory solution has as yet been discovered. There have been almost numberless cases in which some sort of mutual insurance plan has been arranged. In practically every

1589

152A

Gen. Ex. 172

1937 FEB 13 AM 8 12

Laconia, N.H.
Feb. 10, 1937

American Medical Association
Chicago, Ill.

Dear Sir:

I have not subscribed to the Journal since I have started practicing. I want to subscribe at this time, and also start my membership in the A.M.A. Will you please accept this as my application.

There is a small group of men in a neighboring village who are starting a cooperative scheme to aid themselves in major illnesses. I would appreciate any and all information when you may send me on such group plans.

Very truly yours

A. P. Strong M.D

case the outcome, after a number of years, is an increase in the demand for medical services, with a resulting excess of work for the physicians and a consequent decline in the quality of service given. It is almost impossible to avoid these consequences under any plan of sickness insurance that does not include a free choice of physician and payment for medical service according to the "medical act." Even under these conditions there is no certainty of successful outcome.

Where the contract does not include freedom of choice and the physicians are placed on a salary or a per capita basis, the results are apt to be more unsatisfactory. This is especially true where, as we judge from your letter is the case in your locality, the contract does not include all the people in the locality. In that case there is always a division of services, which puts the physicians outside of the contract at a disadvantage and results in poorer service for the remainder of the community and conflict within the medical organization.

As to the financial basis of any such organization, one of the few things on which there has been substantial agreement between the defenders and opponents of sickness insurance is that adequate medical service can not be provided for less than twenty dollars a person; in fact, the usual calculation places it closer to thirty dollars; this means that for a family of four, at least seventy-five dollars a year is required, if complete medical service, including hospitalization is to be included. While we have no information as to the wages paid in the plant to which you refer, it is probable that the payment of such a sum from theaverage income would leave the individual family unable to provide other things which may be more essential to good health than the sort of perfunctory medical service that usually results from such contracts.

The nearest approach to a satisfactory plan that has been developed is that now in operation in Binghamton, New York, a description of which we are enclosing. The central idea of this plan is that a fund is created by whatever payments the employees are able to make, which is used for the payment of medical service according to an agreed-upon fee schedule. The service is then limited by the amount of funds available. The quality of the service and professional standards in general are guaranteed by the local county medical society. All physicians who accept

the fee schedule can give service and are paid according to the schedule. This does away with most of the evils of contract practice, insures free choice of physician, and is not so apt to arouse professional antagonism.

We would suggest that the best thing to do as a first step is to take the matter up with the county medical society and make all arrangements through that organization. We are sending you under separate cover a copy of "Medical Service Plans," which might contain some further suggestions. We might add that some of the county medical societies in Washington and Oregon, in order to meet conditions created by the peculiar Compensation Laws in those states, have attempted to set up plans of medical care with a lower rate of payment than that mentioned above. We believe that it is the general opinion that these plans, while still considered necessary in order to meet the competition of so-called "hospital associations" and private contract practice, are by no means a wholly satisfactory way of practicing medicine.

If we have not answered the questions in which you are interested, do not hesitate to write us further and more specifically, as we are anxious to give all the assistance that we can.

Sincerely yours, A. M. Simons, Assistant Director, Bureau of Medical Economics.

AMS:HEH

Encs. Two articles from Journal on Binghamton Plan. Sent "Medical Service Plans."

Gov. Ex. 174

Thos. M. Adams, M. D., C. P. Savage, M. D., J. Fred Adams, M. D.

Macon County Clinic

Montezuma, Ga.

3-22-37.

American Medical Associaton, Bureau of Information, 535 North Dearborn St., Chicago, Ill.

GENTLEMEN:

We are confronted with a problem about which we want some help, if you are in a position to give it. It is this:

We have, in our town, a small cotton mill, employing approximately 175 people. They, with their families, number approximately 600 people, about one third of the employees unmarried. The owner of this mill wants to get a plan started whereby these people and their families can be taken care of medically. Of course they carry compensation insurance, so that accidents are adequately cared for. If you have any plan already outlined please help me for one of the following three arrangements: (1) Whereby the employees and their families could receive medical attention, (2) whereby they could receive medical attention and hospitalization, (3) hereby they could receive necessary hospitalization. Th fees in this locality are, for house visits $3.00, office visits are $1.00 or $1.50, this exclusive of any laboraory work, etc. We do not intend to make a contract in this affair, we only want some schedule of how much should be withdrawn from their wages, and a plan whereby that can be managed so that a reserve fund is continually at hand to give the above mentioned necessities.

Yours truly, J. Fred Adams, Macon County Clinic,
by J. Fred Adams, M. D.

JFA:SU

Gov. Ex. 175

C-6.2-105 July 31, 1937.

Mr. Dan Steible, 1422 Cedar Avenue, Cincinnati, Ohio.

DEAR SIR:

We are snding you under separate cover the pamphlets for which you asked, with the exception of the one "Collecting Medical Fees" which is now out of print.

Regarding the Trinity Hospital at Little Rock, Arkansas, this is one of a variety of plans that have been offered. The attitude of the American Medical Association in regard to such plans is stated in the opinion of the Judicial Council, given herewith:

"So-called Hospital and Health Associations.

"In its report to the House of Delegates at Philadelphia, the Judicial Council gave consideration to the ethical and economic status of so-called hospital and health associations, controlled by groups of laymen, or by individuals,

offering medical and hospital service to any one who will buy "membership" and pay a nominal sum each month as dues."

The Judicial Council's report states: "Such schemes have been put into operation in various places and have failed within a few weeks or months because of inadequate income or because of failure to render good service. The Judicial Council has regarded these schemes as being economically unsound, unethical and inimical to the public interest.

"Within the last year, 1930-31, some community hospitals have announced their intention to provide medical, surgical and hospital service to families on a flat rate basis. In at least one instance, such service has been offered to families, for $35 a year, irrespective of the number of members in such families. In most instances, certain exceptions are made in that persons with chronic diseases are not entitled to receive the benefits of the plan and obstetrical service is not supplied without additional compensation. The members of the Judicial Council doubt that it is wise to lead the people in any community to believe that all necessary medical and hospital service, even though chronic diseases and obstetrical care be excepted, can be provided for the average family for $35 a year. In the cases presented to it the Judicial Council has advised against adoption of such plans by community hospitals because it is believed that they are not economically sound in that they may be unfavorably affected by conditions entirely beyond control under which contracts cannot be fulfilled. There are other aspects of the matter that readily present themselves for consideration involving the interest of physicians in the community who cannot participate in such plans."

I have not yet seen the August issue of the American Magazine to which you refer. An article in the January 1935 issue of the American Magazine, where this plan was first given publicity, stated:

"In the United States the idea has been meeting bitter opposition, principally from the American Medical Association, which at its annual convention in Cleveland some weeks ago threw its weight against the plan. Even so, sentiment may change as the idea spreads—after eight months' study the American College of Surgeons, meeting a few days earlier in Chicago, wholeheartedly endorsed the periodic prepayment plan."

As you will note, the official position of the A.M.A. is not correctly stated in the above quotation. Neither is the statement true concerning the American College of Surgeons. Aside from the objections noted in the opinion of the Judicial Council, there has always been opposition to any form of advertisement or solicitation for patronage in connection with medical services.

I am adding to the list of pamphlets for which you asked, one entitled "Economics and the Ethics of Medicine" where you will find this subject discussed on pages 18 to 26.

Sincerely yours, A. M. Simons, Assistant Director, Bureau of Medical Economics.

AMS:HHH

Gov. Ex. 176

The Fredk. A. Schmidt Co., Realtors

Cincinnati, Ohio

Office of Dan Steible, Director of Advertising and Publicity

July 29, 1937.

Bureau of Medical Economics, American Medical Assn., Chicago, Ill.

GENTLEMEN:

I am making a study of group medical services and prepayment plans. Am informed that the following booklets are available from you:

Collecting Medical Fees
Contract Practice
Group-Hosp. Contracts and Ins. Contracts
Group Practice
New Forms of Medical Practice
Prepayment Plans for Hospital Care
Some Phases of Contract Practice
Economics and the Ethics of Medicine.

I will appreciate any or all of these if available. I am particularly interested in the type of institution represented

by Trinity Hospital, Little Rock, Ark., as described in articles in the August American Magazine and Readers Digest.

Very truly yours, Dan Steible.

P. S.—Please address me at residence, 1422 Cedar av., Cincinnati, O.

(Gov. Ex. 202 inadvertently printed, read R. 996.)

Gov. Ex. 202

August 18, 1937.

Dr. C. B. Conklin, Secretary, Medical Society of the District of Columbia, 1718 M Street, N.W., Washington, D. C.

DEAR DR. CONKLIN:

I thank you for your letter of August 14, stating the present position of The Medical Society of the District of Columbia with reference to the Group Health Association.

I understand from your letter that everything that was said and done by Dr. Leland and me in the course of our recent conference with the committee then having the Group Health Association under consideration is now before the committee newly appointed to study the matter. If there is anything in what either of us said or did that was obscure and that calls for explanation or elaboration, we shall be glad to undertake to explain or elaborate it for the information and guidance of the committee. Neither of us has at the present time any further proposal looking toward forestalling the growth of the Group Health Association or toward preventing the organization and growth of similar groups in the District of Columbia.

Has The Medical Society of the District of Columbia taken the advice of counsel with respect to the situation? If so, we shall appreciate it very much if you let us know what that advice was, with citations to statutes and cases supporting it.

Yours truly, Wm. C. Woodward, Director.

WCW.DC

Gov. Ex. 224

Columbia Hospital for Women

Washington, D. C.

Col. P. M. Ashburn, Superintendent

September 14th, 1937.

William D. Cutter, M.D., Secretary, American Medical Association, Chicago, Ill.

MY DEAR DOCTOR CUTTER:

I acknowledge receipt of your letter of September 8th, enclosing Dr. C. M. Peterson's report of June 11th, 1937, on Columbia Hospital for Women and Lying-In Asylum.

I shall take great pleasure in submitting this report and its contained recommendations to the Board of Directors and the Medical Board at the times of their next regular meetings. Meanwhile, I would draw your attention to three minor errors as to facts. Under the first paragraph of the heading "General Statement" occur the statements "The board of trustees meets annually" and "There is no representation from the medical board". The facts are that the board of trustees (Directors) meets quarterly, and the medical board is represented on this (as well as on the Executive Committee, which meets monthly) by its president and vice-president, who are always invited to attend meetings and often do so. There they have all the rights of members except the vote. They hear all of the hospital business and are free to discuss any matters or to introduce new matters, to make recommendations as they see fit.

In the third paragraph under the same heading "General Statement", it is sated "There is a private floor, a semi-private floor and a ward floor." Of the three floors for patients, two are devoted to both private and semi-private cases, and the third mostly to ward cases, but it has also two private rooms and one semi-private.

I am not quite clear as to the statement under C-2, Teaching, that "residents occasionally are asked to demonstrate to clerks from Georgetown University." There is an arrangement whereby two Georgetown undergraduates at a time may be present as onlookers at labor in ward cases and receive instruction, but not take any part in the delivery. I presume that this is what is meant.

Very sincerely yours, P. M. Ashburn, Supt.

Gov. Ex. 225

September 17, 1937.

Col. P. M. Ashburn, M.D., Supt. Columbia Hospital for Women, Washington, D. C.

DEAR COLONEL ASHBURN:

Thank you for the information contained in your letter of September 14th. The corrections noted will be attached to Dr. Peterson's report.

We shall be glad to hear from you again after the report has been presented to the Board of Directors and the Medical Board.

Very truly yours, —— ——.

WDC:MH

Gov. Ex. 226

Columbia Hospital for Women

Washington, D. C.

Col. P. M. Ashburn, Superintendent

September 29th, 1937.

Dr. William D. Cutter, Secretary, Council on Medical Education and Hospitals, American Medical Association, Chicago, Ill.

MY DEAR DOCTOR CUTTER:

Referring to your letter of September 17th, I report that I have submitted the report of Dr. C. M. Peterson's inspection of this hospital on June 11th, 1937, to the Medical Board.

I am requested to inform you that the Board takes cognizance of the recommendations made and will try to meet them as it becomes possible.

I can also assure that the Board of Directors will be similarly disposed.

Very sincerely yours, P. M. Ashburn, M.D., Superintendent.

PMA/d

Gov. Ex. 252

Trinity Hospital

Little Rock, Arkansas

August 8, 1936.

Dr. William D. Cutter, American Medical Association, 535 North Dearborn Street, Chicago, Illinois.

DEAR DOCTOR CUTTER:

In your letter of July 16 you state that Trinity Hospital has been omitted from the register of hospitals in the directory because "it became apparent that policies adopted by the hospital made it inconsistent for us to further continue to endorse the institution before our readers". I would be interested to know just how you arrived at this conclusion. As you are aware, we do have a plan of prepaid medical care which conforms in all particulars to the ten requirements of the A.M.A. This plan, as you are also probably aware, has met with violent opposition by the local medical society and we have been accused of almost every crime in the calendar.

I hesitate to believe that you have acted upon these unsupported accusations and then too, I notice that the Missouri Pacific Railroad Hospital is listed in the directory. This is the hospital of another prepayment medical care plan, which is not voluntary, allows no free choice of physician, but which is compulsory to the point that if the employees do not contribute they lose their jobs and moreover it is entirely managed by laymen who employ physicians on a salary.

All of this has me somewhat confused,—I do not know just what steps we can or should take to make Trinity Hospital eligible for listing. I would appreciate very much your suggestions in this matter.

Yours very truly, Trinity Hospital. Caroline T. Snyder, Superintendent.

CTS/s

Gov. Ex. 261

C-6.2-851
6123

December 20, 1937.

Mr. George H. Saville, Asst. Exec. Sec., Ohio State Medical Assn., 1005 Hartman Theater Bldg., Columbus, Ohio.

DEAR MR. SAVILLE:

I am greatly obliged to you for your letter of December 17th with enclosure.

I shall be in Washington again about the 16th of January and may possibly avail myself at that time of the opportunity to discuss the Group Health Association plan with Mr. Husband.

Incidently, information has just come to me to the effect that the Comptroller of the Budget has ruled that the money advanced by the H. O. L. C. to Group Health Association, Inc., was entirely without authority.

Sincerely yours, R. G. Leland, M. D., Director Bureau of Medical Economics.

RGL:DP

Gov. Ex. 266

C 6.2-22

March 19, 1934.

Dr. Ernest J. Dewees, Ass't. Med. Director, Provident Mutual Life Insurance Company, 46th and Market Streets, Philadelphia, Pennsylvania.

DEAR DOCTOR DEWEES:

In re: Ross-Loos Medical Group, Los Angeles

I am turning over your inquiry of March 16 and the photostats that accompanied it to Dr. Leland, Director of our Bureau of Medical Economics. He is handling all the material on group practice.

Very sincerely yours, —— ——.

AJC:JW

Gov. Ex. 267

March 19, 1934.

DR. LELAND:

The attached inquiry from Dr. Dewees of the Provident Mutual Life and my acknowledgment of it are self-explanatory. Can you help him?

A. J. Cramp.

AJC:JW

Received: Bureau of Medical Economics, Mar. 19, 1934. Disposition C-6.2-22.

Gov. Ex. 282

The Long Island College Hospital

Henry, Pacific and Amity Streets

Bernard McDermott, Superintendent

Brooklyn, New York City

Tel. Main 4-4000 9-24-38.

Dr. Morris Fishbein, 535 N. Dearborn St., Chicago, Illinois.

DEAR DOCTOR FISHBEIN:

Your answer to my letter of the nineteenth of this month has been received. Since I wrote to you I have obtained some additional information regarding the group that I wrote you about and have heard from the director of the same. The group concerned is the Group Health Association, Incorporated, 1328 Eye Street, N. W., Washington, D. C. It is apparently an organization composed of government employees and their dependents, and I am told is fully supplied with all necessary equipment and technical personnel for the operation of a complete modern clinic with the highest standard of ethical, medical and surgical and obstetrical care and treatment, including hospitalization. The director of this group is Dr. Raymond E. Selders. The position open is for an obstetrician who would perhaps have to do some general work in addition for a time. The salary I am told is about the figure that I stated in my other letter to you.

I do not know whether this will aid you more in advising me, but at the present time is all the information that I

have. I am contemplating on going down there soon and looking into the matter at first hand, and if there is any other pertinent information that I can learn while there I shall write you again. I appreciate very much, indeed, your interest and willingness to advise me. Since I complete my work here a week from today, I shall most probably go home to Wisconsin for a short time before doing anything about this proposition one way or another. In the meantime I shall run down and investigate further, since I am interested.

With sincere appreciation, I am

Very truly yours, Fred Hammerly, M. D.

FH/B

(Original of Gov. Ex. 291 read at R. 1107.)

Gov. Ex. 291

Received: Bureau of Medical Economics, Aug. 2, 1938. File C-6.2-851.

August 27, 1938.

Mr. M. K. Heartfield, Washington, D. C.

DEAR MR. HEARTFIELD:

I appreciate your letter of August 23, together with the information that it contains. This is most heartening, as indicating the public reaction in Washington toward Group Health Association activities.

I am referring your letter *of* Dr. Olin West, secretary of the Association, and to Dr. R. G. Leland of our Bureau of Medical Economics.

With best wishes, and with the hope of seeing you sometime soon, I am

Sincerely yours, —— ——.

S.

Gov. Ex 294

Copy goes to Dr. West and Dr. Fishbein 9/1/37.

Memorandum for Dr. West and Dr. Fishbein.

To avoid possible conflict on my part with the attached Canons of Professional Ethics of the American Bar Association, I am submitting the accompanying material to

you in the form of a report. If you decide to publish it, I hope that my letter will be published along with it so as to make my status clear. If the letter should be addressed to you or to either of you, change can be made accordingly.

The minutes of the meeting of the Exectuive Committee, June 29, 1937, show the adoption of the following resolution:

"Doctor Bloss moved that the Editor and the Secretary and General Manager be authorized to proceed to inform the profession of the country as to the efforts of the HOLC to enter into the practice of medicine and as to the present status of the proposal to organize cooperatives by the government. Doctor Hayden seconded the motion and it was carried."

WCW-btm—9-1-37

American Medical Association
Bureau of Legal Medicine and Legislation
William C. Woodward, M. D., LL.M., Director
535 North Dearborn Street, Chicago.

September 1, 1937.

To the Board of Trustees, American Medical Association:

At the meeting of the Executive Committee of the Board of Trustees of the American Medical Association, June 29, 1937, a resolution was adopted authorizing the Editor and the Secretary and General Manager to inform the medical profession of the country as to the efforts of the Home Owners' Loan Corporation to enter upon the practice of medicine and as to the present status of the proposal to organize cooperatives by the Government. In response to your request for information concerning the matter, I submit the following report.

Respectfully, Wm. C. Woodward, M. D., LL.M., Director, Bureau of Legal Medicine and Legislation.

WCW-btm.
File Sep. 1, 1937. W. C. W.

Group Health Association, Incorporated
Unlicensed Health Insurance and Corporation Practice of Medicine Under Federal Auspices

Unlicensed and unregulated health insurance and corporate practice of medicine in the District of Columbia,

and wherever else in the world a civil officer or employee of the United States Government may be found, are proposed in a certificate purporting to be a certificate of incorporation, filed on behalf of Group Health Association, Inc., in the office of the Recorder of Deeds of the District of Columbia, February 24, 1937. The certificate makes eligible for membership every employee of every branch of the United States Government other than officers and enlisted men of the Army and Navy. It attempts to authorize the corporation—

"To provide, without profit to the corporation, for the service of physicians and other medical attention and any and all kinds of medical, surgical and hospital treatment to the members hereof and their dependents, and the construction and operation of a clinic and medical office building, and the construction and operation of a hospital in the manner permitted by law, for the members hereof and their dependents, and the operation of a drug store or pharmacy, and the providing of nurses and of drugs and remedies for the members hereof and their dependents, and the furnishing of all forms of hospital service and attention to the members hereof and their dependents, and in general the giving to the membership of this association and their dependents of all forms of care, treatment or attention that may be required by the sick or in the prevention of disease. Certificate of Incorporation, pages 1 and 2.

The Federal Home Loan Bank Board, a fiscal agency of the United States Government, is sponsoring the Group Health Association morally and through a contract of such a character that neither the Federal Home Loan Bank Board nor the Group Health Association is willing to make it public (Letter from John W. Childress, Assistant to Chairman, Home Owners' Loan Corporation, July 27, 1937, to Hon. Louis Ludlow), but which, according to newspaper reports, guarantees up to $100,000 as an advance to help inaugurate the system (Washington Herald, August 25, 1937).

Origin of Group Health Association.—The development of a health insurance organization among employees of the Federal Government in the District of Columbia, to pay benefits to its members in the form of medical and hospital service and not in cash, was foreshadowed by an anonymous

19-page prospectus, marked "Confidential: For Private Circulation Only," that came to light in the early part of the current year. It offered "A Plan for a Cooperative Medical Service on a Periodic Payment Basis for Federal Employees and Their Families in Washington." The prospectus said:

"The aim of this plan is to make available to Federal employees in Washington, and to their families, adequate medical care, both preventive and curative; to provide this care at moderate cost; and to place that cost on a regular, budgetable basis within the means of the group to be served. If Federal employees are typical of the general population with equivalent incomes, many do not now obtain adequate medical care, especially preventive service and care in chronic conditions, while many others incur disastrous debts each year because of sickness costs. The provision of better care should promote health and well-being and reduce time lost from work because of illness. The plan should be of benefit not only to the employees and their families, but also to the Government they serve." Prospectus, page 2.

The prospectus stated incidentally that "federal employees lose approximately 7 days a year from work because of illness" (Prospectus, page 2), but it did not purport to justify the proposed organization of a health insurance association on the basis of any study of the nature and extent of illness among federal employees and their dependents, nor on the cost of such illness to such employees or to the Government. Later, however, after Group Health Association had been organized, its president, by way of justification or excuse, asserted that the Association was the result of studies of health conditions among the employees of the Federal Home Loan Bank Board and its affiliated agencies. (Minutes of Special Meeting of Executive Committee, Medical Society of District of Columbia, June 24, 1937, Penniman—pages 1, 2, 9, Zimmerman—page 9.) No report of any such studies, however, their methods and results has ever been made public. Admittedly, too, even the secret study referred to did not include a parallel study of sickness among employees of the Federal Government other than those in the Home Owners' Loan Corporation, one of the affiliated agencies of the Federal Home Loan Bank Board. (Minutes of Special Meeting, supra, Penniman, page 9.) To determine the significance even of the health

studies made it would be necessary to know (1) the character of such studies, (2) by whom they were made, (3) the nature and extent of illness discovered among employees of the Home Owners' Loan Corporation, (4) the relation of such illness to the habits of the employees and their working and home conditions, including illness among their dependents, and (5) the frequency, duration, and severity of illness among employees of the Federal Home Loan Bank Board and its affiliated agencies in comparison with illness among employees in other branches of the federal service. In the absence of such data, neither the Federal Home Loan Bank Board nor anyone else could or can determine the significance of the study said to have been made, or intelligently deduce from such studies the reasons why the Board, in seeking a remedy for the conditions found, should have ignored the United States Public Health Service and turned for aid to an untried, private, lay health insurance association.

Incorporation of Group Health Association.—The Code of the District of Columbia, 1929, Title 5, Chapter 7, Section 179, provides—

"Every corporation, joint-stock company, or association not exempt herein, transacting business in the District of Columbia, which collects premiums, dues, or assessments from its members or from holders of its certificates or policies, and which provides for the payment of indemnity on account of sickness or accident, or a benefit in case of death, shall be known as 'health, accident, and life insurance companies or associations'."

The Group Health Association comes clearly within the category described above, for the fact that it pays its members indemnity, not in cash, but in the form of medical and hospital service, is not material. The Association, however, was probably deterred from undertaking [to incorporate] operate under this section because it provides that—

"No such company or association shall transact business within the District of Columbia unless it shall have in assets or in capital stock fully paid up in cash, or in both together, not less than twenty-five thousand dollars as a capital or guarantee fund * * *"

Presumably, the Association, at the time of its organization, did not have in hand $25,000 wherewith to establish the required capital or guarantee fund.

It is true that this section of the District Code, regulating the business of insurance in the District of Columbia, provides—

"That nothing contained herein shall apply to any relief association, not conducted for profit, composed solely of officers and enlisted men of the United States Army or Navy, or solely of employees of any other branch of the United States Government service, or solely of employees of any individual, company, firm, or corporation."

But Group Health Association could not take advantage of this, for it is not a "relief association," but an insurance association, and, moreover, under what purport to be the by-laws of the Association, its membership is not to be made up solely of employees of the Federal Government. Members whose connections with the Federal Government have terminated are to have the right of continuous membership as long as they pay their dues and assessments. (By-Laws, Article 2, Section 6.) The Association is to give no "relief" within the legal meaning of that term; it is to do nothing more than discharge its legal obligations to its members under its membership agreement.

That an association organized and functioning as Group Health Association is, is carrying on the business of insurance and is subject to the laws of the District of Columbia regulating insurance and to the supervision of the Superintendent of Insurance for the District, was the conclusion reached by the Corporation Counsel of the District when called on to pass on the status of Group Hospitalization, Inc. Group Hospitalization, Inc.; the American Federation of Government Employees, Internal Revenue Lodge No. 47; and Women's Union of the Bureau of Engraving and Printing, Local 105, the two organizations last named being composed exclusively of government employees, and two others similarly situated were held by the Corporation Counsel without equivocation to be subject to the same regulations of law as apply to any other form of insurance company. The applicability of the Corporation Counsel's ruling to Group Health Association is clear when it is remembered that that Association, like Group Hospitalization, Inc.,

agrees in return for periodic payments of money to furnish hospital service in event of illness.

Only by incorporation, however, could the promoters of Group Health Association avoid personal liability for the debts and torts of the Association. Unable to qualify as a corporation carrying on the insurance business, and perhaps unwilling to submit to the supervision and control to which the insurance business is subjected, the organizers of Group Health Association, while still proposing to carry on the insurance business as defined in the District of Columbia Code, sought refuge under a provision of that Code that has no relation to insurance. Group Health Association was therefore "incorporated" under the provisions of the District of Columbia Code, 1929, Title 5, Chapter 5, authorizing the incorporation of benevolent, charitable, educational, literary, musical, scientific, religious and missionary organizations, including societies formed for mutual improvement or for the promotion of the arts. Nothing in the certificate of incorporation of Group Health Association suggests that it has any educational, literary, musical, scientific, religious or missionary aspirations or is intended for the promotion of the arts. It is difficult to discover any activity named in the certificate of incorporation of Group Health Association that by any possibility brings the organization within any other of the categories named above. The Association is not a benevolent or charitable organization; the poorest charwoman or laborer is to pay for the indemnity offered by the Association against loss through illness exactly the same dues or premiums that are to be paid by even the most wealthy officials and employees of the Federal Home Loan Bank Board and other government agencies, and nobody is to get anything whatever free under any circumstances. The Association cannot successfully claim the right to incorporate as a corporation for "mutual improvement" within the meaning of the Code, for any construction of the provisions of the Code that would permit such incorporation would leave the Code wide open for all manner of abuse; they could be used for the organization of morally and financially irresponsible finance, banking, insurance, business and professional corporations of all kinds, each organized for the "mutual improvement" of its members financially, through the exploitation of some other class or classes in the community, just as Group Health As-

sociation is. Such abuses would not be prevented by the fact that banking, insurance, and many other forms of business activity and the professions are strictly regulated by law; for the business of insurance and the practice of medicine in which Group Health Association proposes to engage are likewise strictly regulated by law, and if through incorporation as an organization "for mutual improvement" the Association could defeat the laws regulating insurance and the practice of medicine, other persons, differently incorporated, could defeat the laws relating to banking, insurance and other businesses and the laws relating to the professions other than medicine.

Aside from the obstacles in the way of the incorporation of Group Health Association pointed out above, there is a further obstacle. An organization cannot be lawfully incorporated to effect unlawful ends, and the certificate of incorporation filed by Group Health Association indicates clearly that one of its purposes, insurance, is unlawful if carried on under the provisions of the Code under which the Association professes to be incorporated, and its other purpose, the practice of medicine, is unlawful if carried on without a license such as the Association does not possess and cannot obtain either in the District of Columbia or in any State in which the Association proposes to practice.

That Group Health Association does propose to engage in the insurance business is apparent from an examination of the District Code, which provides that every corporation, joint stock company, or association not specifically exempted, which collects dues or assessments from its members and which provides for the payment of indemnity on account of sickness or accident shall be known as a health or accident insurance company or association and shall qualify accordingly. (District of Columbia Code, 1929, Title 5, Chapter 7, Section 179). Under its certificate of incorporation, Group Health Association is to collect dues or assessments from its members. In event of their illness or injury, or the illness or injury of any of their dependents, it is to pay indemnity in the form of medical, hospital and other services. The fact that indemnity is paid in the form of services and not in the form of cash, does not alter the situation. Without considering any of the legal principles by which this dictum may be supported, it must be clear even to any one that the payment of indemnity in services

releases the insured member of the Association from what otherwise would be his own obligation to pay in cash for such services, and thus releases his own cash for whatever use he desires to make of it. The payment of indemnity in services is therefore the equivalent of cash payment. ~~This principle is fully supported by the opinion of the Corporation Counsel for the District of Columbia, already referred to, in which he held that Group Hospitalization, Inc., which provides indemnity in the form of hospital service and not in cash, was engaged in the business of insurance and subject to the laws regulating that business.~~

That Group Health Association proposes to practice medicine in the District of Columbia, Maryland, Virginia, and possibly in other States, is shown by its certificate of incorporation and by its by-laws. Its certificate of incorporation is a feebly disguised attempt on the part of the organizers to obtain authority for the Association, without liability on the part of its members, to treat its members and their dependents through hired servants and agents of the Association, for any and all manner of disease and injury, and its so-called by-laws elaborate on that plan. This certainly constitutes the practice of medicine by the Association, notwithstanding the fact that the Association is not and cannot be licensed so to practice. The United States District Attorney for the District of Columbia and the Corporation Counsel for the District have both held that a corporation cannot lawfully engage in the District of Columbia in the practice of a profession that requires licensure or registration as a condition precedent to lawful practice, even though the corporation undertakes to practice through licensed or registered agents. (Opinion of Leslie C. Garnett, United States District Attorney, to Board of Commissioners of the District of Columbia, September 27, 1934 (LCG/jn M-2511); Opinion of E. Barrett Prettyman, Corporation Counsel, to Board of Commissioners for District of Columbia, August 30, 1934 (C. C. C. 3.007/1); enclosed in letter from Dr. William G. Morgan, Washington, D. C., February 11, 1937.) If and when Group Health Association begins to practice medicine as proposed in its certificate of incorporation and its by-laws, the United States District Attorney and the corporation counsel for the District, in pursuance of the duties of their respective offices that they have sworn to perform, will be bound to take action to enforce the law.

From what has been said it is to be assumed that the attempt of the organizers of Group Health Association to incorporate is ineffective and that the members of the organization constitute only a voluntary association. If so, the members of the Association will have a certain personal liability for its debts and torts, notwithstanding the disclaimer in the certificate of incorporation.

Financial Relations

The certificate filed by Group Health Association in the office of the Recorder of Deeds in the District of Columbia provides that the Association is to have no capital stock and is to render to its members and their dependents the services described therein, "without profit to the corporation" and without personal liability on the part of its members. The certificate is silent as to the sources from which the Association obtained the money necessary for its organization and establishment. It is silent also with respect to the sources from which it is to derive its operating income, except that it refers to members who have paid their "dues" and to members who have paid their "dues and assessments, if any." (Certificate, paragraphs Fourth and Seventh.) In the pamphlet containing what purports to be the by-laws of the Association, but which contains nothing to show that the members of the Association ever adopted them, provision is made for the payment of "dues" (By-Laws, Article 7, Section 1) and reference is made to the payment of "assessments" (By-Laws, Article 2, Section 6), but the formula for levying assessments and the limitations on them, if any, do not appear. These supposed by-laws provide, however, that they may be amended by the board of trustees at any time (By-Laws, Article 9, Section 1), and if this attempt to vest in the board of trustees supreme control over the affairs of the Association is effective, the board, at any "regular meeting or at any special meeting when the proposed amendment has been set out in the notice of said meeting," can amend the by-laws so as specifically to authorize assessments and can even at that same meeting levy on the members of the Association any assessment that it deems proper. Possibly, however, if Group Health Association is, in fact, a corporation organized, as it purports to be organized, under the provisions of the Code of the District of Columbia, 1929, Title 5, Chapter 5, the provisions that authorize the corporation itself, and not its

trustees, to make by-laws may sufficiently protect the interests of the members of the Association against incontinent and unreasonable assessments. The right of a corporation as such to delegate to the board of trustees or to any other body the discretion that is vested by the statute in the corporation itself, with respect to the making of by-laws is at least questionable, and it is hardly conceivable that a corporation could in any case effect such a delegation without the affirmative vote of every member. If a corporation can even by a majority vote of its members vest in its board of trustees such authority as these alleged by-laws purport to vest in the board of trustees of Group Health Association, the rights of a minority, however large it may be, rest on a rather tenuous basis.

Federal Home Loan Bank Board.—The sources of the money necessary to promote the organization of Group Health Association in the first place, to organize it, to provide it with necessary quarters and equipment and to guarantee operating costs long enough to determine whether the Association can or cannot become self-supporting, are secrets carefully guarded by the Federal Home Loan Bank Board and the Group Health Association. Whether this is because there are private interests behind the Association that are unwilling to have their connection with it disclosed, or because disclosure might uncover a precedent that would lead to embarrassing demands on the Federal Home Loan Bank Board by persons desirous of forming similar organizations in the field of medicine, dentistry, insurance, or social work, or simply because disclosure would subject the Board and the Association to annoying criticism, is not known. One prominent officer of the Federal Home Loan Bank Board, of the Home Owners' Loan Corporation, and of the Federal Savings and Loan Insurance Corporation (John H. Fahey, Congressional Directory, page 719 and pages 360, 361, and 364), who is a member of Group Health Association and has given it his particular blessing (U. S. News, August 23, 1937, page 7), is listed also as one of the trustees of the Twentieth Century Fund, Inc., of which Edward A. Filene of Boston is listed as president and trustee. (American Foundations and Their Fields, Twentieth Century Fund, Inc., New York, 1935), but perhaps this has no significance.

No law has been found authorizing the Federal Home Loan Bank Board or any of its affiliated agencies to finance

by government loans private organizations such as Group Health Association.] Even if there were such authority, good judgement would hardly justify the making of such a loan in the entire absence of any likelihood of repayment, and there would seem to be no likelihood of the repayment by Group Health Association of any loan made to it under its present set-up. The dues of members of the Association are so low that it is hardly likely that it will ever be able to pay even operating expenses—provided, of course, it undertakes to furnish its members and their dependents with really first class medical and hospital service. So far as any available record shows, no provision has been made by the Association for the amortization of the initial costs of plant and equipment.

Possibly the contract between the Federal Home Loan Bank Board and Group Health Association, made apparently without advertisement or competitive bidding and carefully concealed from the public, may provide for payments to the Association by the Board so greatly in excess of the cost of the service that the Association is to render as to enable the Association to repay such advances as have been made by private interests, to pay for necessary quarters and equipment, and to protect the Association against loss from medical and hospital services rendered officers and employees of the Board and its affiliated agencies, and the dependents of such officers and employees. In any event, it has been admitted that the Home Owners' Loan Corporation has already appropriated an initial sum to enable Group Health Association to render services of some kind, to somebody, somewhere (Minutes of Special Meeting, supra, Penniman, pages 5-6), and according to newspaper reports the Federal Home Loan Bank Board has guaranteed an advance up to $100,000 to get the Association under way (Washington Herald, August 25, 1937).

Dues and Assessments.—Under the by-laws of the Association "family membership" is available for "married or single members with dependents," as a cost of $39.60 per annum payable in equal monthly installments. No limit is placed on the number of dependents on whom a "family member" can confer all benefits of the Association under this class of membership. "Individual membership" available for "married or single members having no declared dependents," is now priced at $26.40 a year, payable monthly (By-Laws, Article 7, Section 1). The amount of the dues

can be changed at any time by the board of trustees (By-Laws, Article 9, Section 1). A "dependent" is defined as a person "totally dependent upon the member of the corporation for a livelihood at the time of such person's disability and before need of medical service" (By-Laws, Article 10, Section 7).

Check-off on Government Payroll.—The form of application for membership provided by Group Health Association offers the member the option of paying his dues personally or of assigning to the Association so much of his government salary as may be necessary for that purpose and requesting his "employer," the Government of the United States, to deduct semi-monthly the amount assigned and remit it to Group Health Association, Inc. As this assignment form is also an application for membership, and obviously belongs to the files of the Association an additional assignment form has been provided, presumably to be filed with the paymaster of the Federal Home Loan Bank Board or the particular affiliate of the board by which the member of the Association is employed. This form specifically assigns, sets over, and directs the Home Owners' Loan Corporation and the Federal Savings and Loan Insurance Corporation to pay Group Health Association the amount due to that Association, out of any salary or wages due or to become due to the member so long as membership continues. This establishes the check-off scheme commonly employed to hinder defections from the ranks of organizations that fear difficulty in maintaining membership and to impose on the employer the burden that properly belongs to the organization of providing a collection agency. Under the check-off system, a member who finds membership no longer advantageous cannot quietly and without explanation cause his membership to be terminated by the simple expedient of omitting payment of dues. He must take affirmative action and resign from the organization, with danger of loss of social standing among his fellows, and he must notify his employer that his membership has been terminated, with the possbile loss of esteem by his superior officers if the organization happens to be a pet scheme that they are promoting. [That such will be the effect, even if it is not the purpose, of the adoption of the check-off scheme by the Federal Home Loan Bank Board and its affiliates and Group Health Association seems probable.]

It is well established, however, even at common law, that the assignment of government salaries is contrary to public policy. In the United States, the assignment of any claim that has not yet been earned is forbidden by statute and even after a claim has matured, it can be legally assigned, if it can be assigned at all, only by conforming with the conditions laid down by statute. (United States Code, 1934 Ed., Title 31, Sec. 203) and the provisions of this statute have been held to apply to government salaries. (3 Dec. Controller of Treasury, 22 op. atty. gen'l 637; Bliss v. Lawrence, 58 N. Y. 442.) So positive are the express and implied inhibitions against the assignment of federal salaries that when it was deemed desirable that employees of the Department of Agriculture (United States Code, 1934 Ed., Title 5, Chap. 9, Sec. 529) and of the Department of Commerce (United States Code, 1934 Ed., Title 5, Chap. 10, Sec. 595) be permitted to assign their salaries, it was deemed necessary first to procure authority by act of Congress, and even then the authority granted for assignments by employees of the Department of Commerce was expressly limited to assignments made while absent from Washington and employed in the field.

The check-off scheme planned by Group Health Association, with the apparent approval of the Federal Home Loan Bank Board and its affiliates, gives the premiums or dues that are payable to the Association priority over every other claim, moral or legal, against the salary of every member of the Association. [What this means can be seen when it is called to mind that] the association does not undertake to indemnify its members in cash, which would help the member to provide himself and his dependents, in time of sickness and in time of health, with the necessaries of life, including medical service, but to indemnify him only in medical and hospital services, and then only to the extent that the board of trustees of the Association and its medical staff deem feasible in view of the resources of the Association at the moment and of the condition and location of the patient. Dues or premiums under the check-off system must be paid. The insured may use only the balance of his salary for such supplementary medical service as the Association does not provide, and for food, clothing, shelter, and drugs and other medical and surgical supplies, necessary for himself and his dependents. The hired physician of the Association is to be assured his wages through the check-off sys-

tem, even though food, medical and surgical supplies, and sometimes essential services, such as the use of radium and deep x-ray therapy, may have to be omitted because of the inability of the employee to provide them. This is in marked contrast with ordinary medical practice where the essentials of life and treatment for the patient and his dependents are obtained first, while the physician waits for his fee—and does so gladly when the circumstances of the patient so indicate.

If Group Health Association succeeds in establishing the check-off system as a proper and lawful way of insuring the payment of the present and prospective debts of government employees it will undoubtedly prove a boon to labor unions, finance corporations, merchants who do business on the installment plan, landlords and others, who under the law cannot attach or garnishee the salary of an employee of the Federal Government but who will be able to protect themselves in advance by demanding assignments of federal salaries as securities for debts. If Group Health Association is going to have the check-off system adopted by the Federal Government for its benefit, there is no reason why any and every other person, whether individual or corporate, may not claim the same privilege.

Membership

The original certificate filed by Group Health Association in the office of the Recorder of Deeds of the District of Columbia makes eligible for membership all "employees of any branch of the United States Government Service other than officers and enlisted men of the United States Army and Navy." It makes no discrimination on account of race or color. Such employees number 840,159 (Congressional Record, July 27, 1937, page 9939) and are scattered throughout the entire civilized world. With their dependents, these employees would probably number 2,500,000 and provide a rather extensive field of medical practice for Group Health Association. The organizers of the Association, however, in what they call its by-laws, seek to handicap the civil employees of the Federal Government who are not employees of the Federal Home Loan Bank Board and its affiliated agencies, by providing that—

"In case persons other than employees of the Federal Home Loan Bank Board and agencies under its direction shall be designated as eligible for membership, such action

shall first have approval of a majority of the board of trustees and a majority of the members of the corporation present in person or by proxy at a regular or special meeting." By-Laws, Article 2, Section 1.

This restriction, however, like all others contained in the by-laws, is of little moment; the board of trustees can remove or modify it in any way they see fit, at any time.

Membership will be restricted geographically by the by-law by which members and their dependents, to be entitled to avail themselves of the medical services to be performed by the Association, must be located in the District of Columbia or within ten miles of its boundaries or must come to the city of Washington for advice and treatment, although the medical director may provide for house calls at points not exceeding twenty miles distant. The potential membership of the Association, however, even as thus geographically restricted will be considerably more than 115,912 (Congressional Record, July 27, 1937, page 9939). To determine the total load to be carried, the dependents of members must be added to the foregoing numbers, possibly an average of two dependents for each member.

The figures stated above show only the potential membership and load of Group Health Association. What the actual membership and load will be, no one can foretell. If, as has been alleged, there is an undue prevalence of illness among employees of the Federal Home Loan Bank Board or of some of its affiliated agencies, a fair number of the physically inferior employees may be expected to join the association. Employees, too, who now are deterred from claiming sick leave because of the expense of employing a physician to vouch for the sickness and to furnish the necessary certificate may join the Association because it furnishes an easy way to obtain such certificates practically gratis. Illness among the dependents of employees, particularly among those with large families, will tend to swell the membership rolls. As affecting the size of the membership, the standards that Group Health Association adopts in determining who may and who may not be a member will be a determining factor. If persons suffering from all manner of chronic diseases and infirmities are readily accepted for membership, employees may postpone applying for membership until they or one or more of their dependents are manifestly in ill health. Only experience

can determine the probable number of members of Group Health Association and of their dependents.

A circumstance that may hinder the growth of membership in Group Health Association is the absence of any obligation to secrecy on its part. A physician is bound by law and by the ethics of his profession to respect the confidences of his patient, and for that reason his patients trust him. The only limit on disclosure by Group Health Association, however, is the law of libel and slander. The fact that the agents of the Association are physicians and are primarily bound to secrecy by the same rules of law and principles of ethics as are other physicians will afford no protection to the patient, since the members of the Association do not employ those physicians to render medical services but employ the Association.

The physicians employed by Group Health Association are primarily the servants and agents of the Association. The records made by them as servants and agents of the Association belong to the Association. Their primary duty is to the Association, not to the patient. They must abide by the terms of their contracts of employment, and those contracts presumably require conformity and compliance with the by-laws and rules of the Association. The by-laws and rules of the Association expressly provide that—

"The Medical Director shall render such reports as the Board of Trustees shall require." (By-Laws, Article 5, Section 6.)

Obviously, under this provision of the by-laws, the board of trustees, which includes two representatives of the Federal Home Loan Bank Board, can call for any disclosure whatever concerning the artivities of the medical director and physicians and nurses working under his direction, and use, free from any obligation to secrecy, the information thus obtained.

A member of Group Health Association, as one of the conditions of membership, seems to waive, in favor of the Association, his right to professional secrecy on the part of any physician-employee of the Association who attends him, and impliedly his dependents, in accepting the services of such physician-employee, likewise waive their right to secrecy.

Area to Be Served.

If it is difficult to determine the future membership of Group Health Association, it is not so difficult to determine the extent of the area over which it plans to extend even its initial activities. As we have seen, the certificate of incorporation contemplates apparently world-wide service. The by-laws, however, propose to limit the area covered by providing that—

"To be able to avail themselves of medical and surgical service, the members or dependents must be located in, or within ten miles of the District of Columbia line, or must come to the City of Washington, D. C., except that the Medical Director may provide for house calls not exceeding twenty miles. (By-Laws, Article 10, Section 6.)

This area covers the entire District and considerable areas in Maryland and Virginia and is bisected by the Potomac river.

The District of Columbia alone covers somewhat more than sixty square miles. An area including the District of Columbia and the territory within ten miles of its boundaries comprises approximately seven hundred and fifty square miles. The territory including the District of Columbia and the region within twenty miles of its boundaries covers approximately nineteen hundred and fifty square miles. It is obvious that to serve even the normal area, covering the District of Columbia and the territory within ten miles of its boundaries, about 750 square miles, will call for the establishment of clinical centers at various points and for liberal provisions for transportation of physicians and nurses and ambulance service. This is based on the announced plan of the Association of operating through salaried full-time physicians and not through local physicians paid on a fee basis. The increased difficulties of the situation if a serious effort is to be made to cover the District of Columbia and an area within twenty miles of its boundaries is apparent.

Benefits or Indemnity Offered.

Group Health Association proposes to provide its members and their dependents with medical and hospital service. This is to be done through a salaried full-time medical staff, supplemented by a few part-time specialists, through

contracts with hospitals, and through nurses when circumstances so require. The medical staff is normally to make home and hospital visits over an area of about 750 square miles and, at the discretion of the medical director, over an area of 1950 square miles. Patients are to be encouraged, however, to present themselves at a central clinic for treatment. In such an ambitious, untried project, it is not surprising that the board of trustees should have reserved the right to itself and to its medical staff to limit the service rendered whenever either the board or the medical staff sees fit. The Association has been careful not to obligate itself to furnish service of any definite kind or quantity. The so-called by-laws of the Association expressly provide that—

"Section 4. The corporation will not assume responsibility for furnishing unlimited medical service to members but will do so only to the extent of its resources.

"Section 5. The Trustees shall have the right to determine and modify the extent of the service to be furnished to members at any time they may decide to do so upon written notice to the members to that effect given fifteen (15) days prior to any such change." By-Laws, Article 10, Sections 4 and 5.

To one familiar with the City of Washington and its environs, the question necessarily arises as to how Group Health Association has solved or proposes to solve the race question. Certainly government officers and employees and their dependents cannot be denied membership in the government-financed Group Health Association simply because they are of African descent. But Washington and vicinity are sufficiently far South to make the drawing of the color line in the service rendered and the refusal to draw such a line each likely to arouse bitter controversy. The solution of the problem will be watched with interest.

Before considering the service or indemnity that Group Health Association promises its members and their dependents—always subject to the will of the board of trustees and its medical staff—it will be well to consider definitely what it will not do or will do only conditionally. The Association will not treat members who suffer from industrial accidents, nor will it perform any surgery on the brain or nervous system. (By-Laws, Article 10, Section 2.) It will not treat venereal diseases, except at the personal expense

of the patient, at the rate of 50 cents per treatment. (By-Laws, Article 10, Section 3.) The Association will not treat a member or any of his dependents if the medical director has recommended confinement to an institution for mental or tubercular disease or drug or alcohol addiction. (By-Laws, Article 10, Section 2.) It will not provide its members with (1) dental treatment; (2) medicines; (3) surgical appliances, orthopedic devices, crutches, or artificial limbs; (4) eyeglasses or eyes [sic]; (5) hearing devices; (6) radium or deep x-ray treatment; (7) oxygen tanks and tents and materials; (8) blood transfusions; (9) special nursing service, unless ordered by the medical director; (10) treatment, services, supplies, and items of any kind prescribed or ordered by a physician not in the service of the Association; nor (11) any expense of hospitalization in excess of that allowed by the Association. The Association will, however, endeavor to procure such merchandise and services for members and their dependents at reduced rates. (By-Laws, Article 10, Section 3.) Additional limitations on any and all services and merchandise furnished by the Association may be imposed by the board of trustees at any time on fifteen days notice (By-Laws, Article 10, Section 5), and in any individual case the medical director or his representative is authorized to determine and prescribe the extent of the medical service to be rendered.

Subject to all the limitations and qualifications stated above, and such further limitations and qualifications as the board of trustees and the medical director and his representatives may impose, the Association offers its members and their dependents in return for the fees paid—

"Medical and surgical examinations and treatments, including examinations in special departments, such as refractions of eyes; laboratory test, x-ray examinations, surgical operations, confinement cases and professional consultations, nursing and ambulance facilities, house calls, and hospitalization in a semi-private room (2 bed room) limited to a period not to exceed 21 days for any one illness. However, members desiring to occupy a private room may do so, in which case the corporation will contribute the sum of $4.00 per day toward the expense of such room for such period. In all hospital cases, the corporation will pay for semi-private room (2 bed room) service only, except in the case of infectious or contagious diseases, in which cases a

maximum of $4.00 per day will be paid for said period, not exceeding 21 days." By-laws, Article 10, Section 1.

So far as can be learned from the certificate filed by Group Health Association and from its by-laws, no member of the Association and no dependent of a member is to have any freedom of choice of his physician. Obviously, this must be so, for with a limited, salaried, full-time medical staff, operating over an area of 750 square miles or more, it would be impossible for each staff member to cover the entire area daily, to satisfy the desires of members scattered over the entire area. It is understood that the Association will not object to a member or a dependent of a member being treated at his own expense, by a physician not in the service of the Association. Inasmuch as the members of the salaried staff of the Association are likely to be looked on by the profession generally in the community as on the outer verge of ethical practice, if not altogether beyond the pale, it is not clear how they are to obtain qualified consultants or procure hospital service for their patients.

The promoters of Group Health Association may or may not be identical with the anonymous proponents of "A Plan for a Cooperative Medical Service" who issued the unsigned prospectus that preceded the organization of the Association, but the views of those who issued that prospectus with respect to the relation of physician and patient are worthy of record—

"The pros and cons of provision of service by a staff of salaried physicians have been carefully considered. The disadvantage of salaried service is that it does not permit the patient to go to any physician he may select, but limits his choice to the physicians who are members of the staff. It is believed that this disadvantage is at a minimum in the case of the population of Federal employees, since many, being newcomers to the city, have not affiliations of long standing with physicians. In any case, the disadvantage is more apparent than real. Actually, the average layman generally chooses his physician on the basis of hearsay and is not qualified to judge competence. With a salaried staff, the patient receives care from a selected group of physicians, chosen by a chief of staff on the basis of their professional qualifications and competence. Furthermore,

only in salaried, group practice is it possible to have a desirable degree of professional supervision of service and ready consultation of one physician with another. Finally, only on this basis can the economies flowing from organization be achieved." Prospectus, pages 7-8.

Obviously, the qualifications of "a selected group of physicians," even though "chosen by a chief of staff on the basis of their professional qualifications and competence," will depend on the salaries that the chief of staff can offer, on security and duration of tenure, and on the assurance of good professional standing in the community. Whether the medical director in Washington, even if the salaries offered and the terms of employment are such as to bring out really qualified applicants, will be able to choose a staff on the basis of professional qualification and competence alone and free from political and social influence and from the influence of the private financial supporters of the scheme, is doubtful.

No announcement has been made at present writing of the medical staff, beyond the appointment of Henry R. Brown, M. D., formerly of the Veterans' Administration, as medical director. No announcement has been made of the hospitals in which the Association proposes to provide accommodations for its members and their dependents. Quarters for a clinic or laboratory have been rented in the business district of Washington, but are not yet equipped. The date originally proposed for inaugurating active medical and hospital service, September 1, has been set ahead indefinitely.

Conclusions

There is no reason to believe that Group Health Association, even if it could lawfully engage in the insurance business and the practice of medicine as it proposes to do, could materially reduce the absence rate among officers and employees of the Home Owners' Loan Corporation or its related agencies. Absences on account of illness might even be increased, for a medical certificate would cost nothing. A physician cannot always deny that a man has a disabling headache or a woman, a disabling menstrual period.

Since there is no evidence to show that government employees are unable to pay for medical services—there is no reason for believing that the cheapening of medical service

will make him more likely to seek medical aid. There is no reason to believe that the character of medical service under the Group Health Association plan can be kept at the same average level of quality as that prevailing in private practice. Especially would quality be likely to fail in times of epidemics and of any unusual prevalence of disease, when the limited medical staff of the Association would be overworked and could find no relief. In any event, medical service under the Association would be likely to be handicapped by difficulty likely to be experienced in obtaining the best consultant service and hospital accommodations. Physicians who sell their services to an organization like Group Health Association for resale to patients are certain to lose professional caste [and therefore may be looked on askance when they seek consultants or the right to treat patients in reputable hospitals.] status

The probable results on the medical profession of the successful operation in the District of Columbia and vicinity even of a single organization such as Group Health Association cannot be estimated, because of the peculiar situation of the District. [The population of the District was 486,869 in 1930 (Chicago Daily News Almanac, 1937, page 130). The activities of Group Health Association, however, are to extend normally over all the area within ten miles of the boundaries of the District, and in some cases they may extend to a distance of twenty miles, and the population of the area thus to be served outside the District is not known. The number of physicians in the District of Columbia, as shown by the latest edition of the American Medical Directory, is 1,998, but of this number 439 are in the government services and many are not actively engaged in practice. On the other hand, in the areas in Maryland and Virginia to be served by the Association there is an unknown number of practitioners. Any effort toward a statistical presentation of the situation must take into consideration that a large number of persons are lawfully entitled, generally or under special circumstances, to medical treatment by government physicians and in hospitals owned and operated by the Government, such as officers and enlisted men of the Army, the Navy, and the Marine Corps, officers of the Public Health Service, veterans of the World War and other wars, all government employees injured or suffering from disease by reason of their duties, and the police and firemen of the District of Columbia.]

[Disregarding the disturbing factors set forth above, however, we find that] out of a total population of 486,869 in the District of Columbia, 115,912 are civil employees of the United States Government, and of these, 2,517 are employees of the Federal Home Loan Bank Board and its affiliated agencies. If to these persons, all of whom are eligible for membership in Group Health Association, we add their dependents, allowing an average of two dependents for each employee, we have a total of 347,736 persons out of a total population of 486,869 that the promoters of Group Health Association, according to their certificate of incorporation, seek to withdraw from the ordinary practice of medicine and to cover into a group health insurance contract-practice system and treat through physicians hired for that purposes. The effect of the withdrawal from private practice of even one-half that number of persons, all of whom are able to pay for medical services, would materially diminish the incomes of physicians in private practice in the District of Columbia and render it necessary for them to increase their charges or to sacrifice the practices they have built up and go elsewhere. Either event might easily react against public interest.

Under the scheme proposed by Group Health Association, far greater benefits will accrue to the richer and more liberally paid employees of the Federal Home Loan Bank Board and its affiliates and of such other government agencies as may identify themselves with the scheme than to employees of more meager resources. The scheme is so planned that the richer and more liberally paid employees are to obtain medical services at rates based on the incomes of the poorest employees. The courts have repeatedly held that the value of medical services rendered to a patient may be properly appraised in relation to his wealth, just as the value of legal services are commonly appraised in relation to the value of the interests that the lawyer is called on to protect, whether interests involving the life of his client or his client's property. Under the present scheme, fees that are charged for medical services to the richer and more liberally paid employees are to be identical with those charged employees of the lowest grade, doing part time work. The richer and more highly paid and influential employees are therefore to gain the most financially by this scheme, and nothing in the certificate of incorpora-

tion or by-laws assures to those lower in the ranks that they will receive the same quantity and class of medical service as that provided for their superiors.

Insert 2, Galley 9

The population of the District was 486,869 in 1930. The activities of Group Health Association, however, are to extend normally over all the area within ten miles of the boundaries of the District, and in some cases they may extend to a distance of twenty miles, and the population of the area thus to be served outside the District is not known. The number of physicians in the District of Columbia, as shown by the latest edition of the American Medical Directory, is 1,998, but of this number 439 are in the government services and many are not actively engaged in practice. On the other hand, in the areas in Maryland and Virginia to be served by the Association there is an unknown number of practitioners. Any effort toward a statistical presentation of the situation must take into consideration that a large number of persons are lawfully entitled, generally or under special circumstances, to medical treatment by government physicians and in hospitals owned and operated by the Government, such as officers and enlisted men of the Army, the Navy, and the Marine Corps, officers of the Public Health Service, veterans of the World War and other wars, all government employees injured or suffering from disease by reason of their duties, and the police and firemen of the District of Columbia.

Insert 1, Galley 7

A circumstance that may hinder the growth of membership in Group Health Association is the absence of any obligation to secrecy on its part. A physician is bound by law and by the ethics of his profession to respect the confidences of his patient, and for that reason his patients trust him. The only limit on disclosure by Group Health Association, however, is the law of libel and slander. The fact that the agents of the Association are physicians and are primarily bound to secrecy by the same rules of law and principles of ethics as are other physicians will afford no protection to the patient, since the members of the Association do not employ those physicians to render medical services but employ the Association.

1726

Gov. Ex. 307

(Columbia Hospital)

Questionnaire

1. What communication has your hospital had from Group Health Ass., Inc.? Asking to admit pts. & privileges for Dr. Selders.

2. What reply has your hospital made to Group Health Association, Inc.? Will admit pts—Dr. Selders must apply——

3. Which, if any of the following Doctors, are now members of your Medical Staff, in any capacity, or have privileges to practice in your hospital?

Dr. Henry Rolf Brown, None	Dr. R. Stephen Hulburt
Dr. Allan E. Lee	Dr. Raymond E. Selders
Dr. Mario Scandiffio	Dr. Edmond D. Wells

4. Is your hospital in sympathy with the policies of The Medical Soc. of D. C.? Yes.

5. Is the entire Medical Staff of your hospital reappointed annually? Yes.

6. Are appointments to the Medical Staff of your hospital approved by The Medical Staff? Yes.

7. What governing body of your hospital finally makes appointments to The Medical Staff? Bd. of Directors.

8. Does your hospital require membership in the Medical Society of D. C. as a qualification for appointments to it's Medical Staff? No.

9. What percentage of the entire Medical Staff of your hospital are members of the Medical Soc. of D. C.? Practically 100%.

10. Does your hospital require membership in the A. M. A. as a qualification for appointment to it's Medical Staff? No.

11. What percentage of the entire Medical Staff of your hospital are members of the A. M. A.? No?

12. Is your hospital a beneficiary of Community Chest funds? Yes——

13. Will you kindly make any other inquiry that you think might be pertinent at this time?

Gov. Ex. 351

December 14, 1937.

Dr. W. A. Bloedorn, Medical Director, The George Washington University Hospital, 1339 H Street, N. W., Washington, D. C.

DEAR DR. BLOEDORN:

Under date of November 15th I returned to you the application of D. Raymond E. Selders, Surgeon, attached to the staff of the Group Health Association, for permission to be placed on the courtesy staff of the George Washington University Hospital.

While we do not desire to appear impatient, the urgency of this matter prompts us to inquire whether or not the Committee on Hospital Privileges has as yet had an opportunity to render a decision on this application.

Your prompt reply will be very much appreciated.

Yours very truly, William F. Penniman, President.

SKB:RB

Gov. Ex. 357

Sibley Memorial Hospital
and
Lucy Webb Hayes Nurse Training School
1140 North Capitol Street
Washington, D. C.

November 17, 1937

Mr. William F. Penniman, President, Group Health Association, 1328 Eye Street, N. W., Washington, D. C.

MY DEAR MR. PENNIMAN:

Your letter of November 8, 1937 addressed to Sibley Memorial Hospital has been presented to the Local Board of Directors for consideration of the requests contained therein.

Inasmuch as the granting of these requests would necessitate a complete revision of the rules and regulations cov-

ering the admission and treatment of patients, the Local Board of Directors feels that the problem should be maturely studied before coming to a conclusion. Therefore by unanimous vote the Local Board of Directors instructed the Acting Chairman to appoint a special committee of three to thoroughly investigate and study the whole question. The entire matter with recommendations will then be referred back to the Local Board of Directors for such action as they may deem necessary or advisable and you will be informed of its decision.

Very sincerely yours, Lewis H. Taylor, President of Sibley Memorial Hospital.

LHT/nm.

Gov. Ex. 384

July 28, 1938.

Capt. Chester Wells, President, Board of Trustees, Columbia Hospital, 25th and L Streets, N. W., Washington, D. C.

My dear Captain Wells:

In view of Justice Bailey's decision yesterday establishing the legality of Group Health Association, Inc., it is respectfully requested that Dr. Raymond E. Selders, a member of our staff, be admitted to the courtesy staff of Columbia Hospital, and that he may attend members of this Association admitted as patients there.

We shall appreciate the courtesy of an early reply.

Very truly yours, W. C. Kirkpatrick, President.

Gov. Ex. 393

July 28, 1938.

Mr. Gist Blair, President, Board of Trustees, New Emergency Hospital, 1711 New York Avenue, N. W., Washington, D. C.

My dear Mr. Blair:

In view of Justice Bailey's decision yesterday establishing the legality of Group Health Association, Inc., it is

respectfully requested that Dr. Raymond E. Selders, a member of our staff, be admitted to the courtesy staff of New Emergency Hospital, and that he may attend members of this Association admitted as patients there.

We shall appreciate the courtesy of an early reply.

Very truly yours, W. C. Kirkpatrick, President.

July 28, 1938.

Received letter from Group Health Association, Inc.

Mr. Gist Blair, President, Board of Trustees, New Emergency Hospital, 1711 New York Avenue, N. W. Washington, D. C. By E. Rose, Secy. to Supt., Emergency Hosp.

Gov. Ex. 398

February 2, 1938.

Dr. W. A. Bloedorn, Medical Director, The George Washington University Hospital, 1339 H Street, N. W., Washington, D. C.

MY DEAR DR. BLOEDORN:

Please refer to your letter of November 11, 1937, addressed to Mr. William F. Penniman, and also Mr. Penniman's reply of November 15, 1937, relative to an application of Dr. Raymond E. Selders, a surgeon on the staff of Group Health Association, Inc., for privileges of the courtesy staff of The George Washington University Hospital.

This matter is one of great importance to us and we would very much appreciate having a reply from you as to what action has been taken by the Committee on Hospital Privileges.

Very sincerely yours, W. C. Kirkpatrick, President.

WCK:bj.

Gov. Ex. 399

July 28, 1938.

Dr. W. A. Bloedorn, Medical Director, George Washington University Hospital, 1339 H Street, N. W., Washington, D. C.

MY DEAR DOCTOR BLOEDORN:

In view of Justice Bailey's decision yesterday establishing the legality of Group Health Association, Inc., it is re-

spectfully requested that Dr. Raymond E. Selders, a member of our staff, be admitted to the courtesy staff of George Washington University Hospital, and that he may attend members of this Association admitted as patients there.

We shall appreciate the courtesy of an early reply.

Very truly yours, W. C. Kirkpatrick, President.

July 28, 1938.

Received letter from Group Health Association, Inc. Dr. W. A. Bloedorn, Medical Director, George Washington University Hospital, 1339 H Street N. W., Washington, D. C. By E. Nichols.

Gov. Ex. 426

Sibley Memorial Hospital

and

Lucy Webb Hayes Nurse Training School

1140 North Capitol Street

Washington, D. C.

Lewis H. Taylor, M. D., President

Miss Edith V. Youngquist, Treasurer

Mrs. Helen Shoemaker, R. N., Acting Superintendent of Nurses

August 2, 1938.

Mr. Howard F. Vickery, Room 765, Federal Home Loan Bank Board, 1st Bet. Ind. Ave. and D Streets, N. W., Washington, D. C.

MY DEAR MR. VICKERY:

Receipt is acknowledged of United States Postal Money Order No. 41046 in the sum of $15.35, payable to the order of Sibley Hospital, dated August 1, 1938, which has been received from you on account of your bill at Sibley Hospital. Receipt for said payment is forwarded to you herewith.

Together with said Postal Money Order we have received from you check No. 1087 of Group Health Association, Inc.

dated July 18, 1938, in the sum of $19, payable to the order of Howard F. Vickery and Sibley Memorial Hospital. At the present time we have no contractural relationship with Group Health Association, Inc. whereby that association assumes the hospital payments for its members who are admitted to this hospital, although application for such privilege is now under consideration by our Board of Directors. In your admission to the hospital you assumed personal responsibility for your account. In view of the fact that we have no contractural relationship with the Group Health Association, Inc., we are returning said check to you herewith and request that the balance of your account to this hospital in the sum of $19 be paid by you either by your personal check or United States Money Order.

Very truly yours, Lewis H. Taylor, M.D., President.

LHT:CR.

Inc.

August 4, 1938.

Sibley Memorial Hospital, 1140 North Capitol Street, Washington, D. C.

DEAR SIRS:

This is to advise you that Group Health Association, Inc. has been by me requested to make payment to you of the indebtedness due you of $19.00 arising out of your recent services to Howard F. Vickery.

If, for any reason you do not accept the tendered payment, you will kindly advise Group Health Association, Inc. the basis of your refusal as I expect to leave settlement of this indebtedness entirely with the Association, and have given it full authority to act for me in the premises.

.....

Gov. Ex. 427

August 5, 1938.

Dr. Lewis H. Taylor, President, Sibley Memorial Hospital, 1140 North Capitol Street, Washington, D. C.

DEAR DR. TAYLOR:

This will refer to your letter of August 2, 1938 addressed to Mr. Howard F. Vickery with which you return our check

#1087 in the amount of $19.00 for Board, Drugs and Laboratory Service to Mr. Howard F. Vickery, a member of Group Health Association, Inc. The check in question is returned herewith together with a request signed by Mr. Vickery that you accept the check as tendered.

Very truly yours, W. C. Kirkpatrick, President.

Encs.
WCK:BJ

Gov. Ex. 428

Sibley Memorial Hospital
and
Lucy Webb Hayes Nurse Training School
1140 North Capitol Street
Washington, D. C.
Lewis H. Taylor, M.D., President
Miss Edith V. Youngquist, Treasurer
Mr. Helen Shoemaker, R. N., Acting Superintendent of Nurses

August 12, 1938.

Mr. Howard F. Vickery, Apartment 401, Corcoran Courts, Washington, D. C.

MY DEAR MR. VICKERY:

Receipt is acknowledged of your letter of August 5, 1938, enclosing check of Group Health Association No. 1087, in the amount of $19 payable to the order of Sibley Memorial Hospital. Said check is returned to you herewith.

It is requested that you pay the amount of your indebtedness to this hospital in cash.

Yours very truly, Lewis H. Taylor, M.D., President.

Gov. Ex. 429

August 18, 1938.

Dr. Lewis H. Taylor, President, Sibley Memorial Hospital, 1440 North Capitol Street, Washington, D. C.

DEAR DR. TAYLOR:

This will refer to your letter of August 12, 1938, addressed to Mr. Howard F. Vickery, Apartment 401, Cor-

coran Courts, Washington, D. C., which letter has been referred to the writer for attention by Mr. Vickery.

Mr. Vickery has previously notified you that this Association is acting in his behalf with respect to the hospital bill amounting to $19.00 due you.

You will find enclosed our check #1087, which was previously forwarded to you and which was returned with your letter to Mr. Vickery, now duly certified by the Riggs National Bank.

If for any reason you do not see fit to accept this certified check, advice as to the basis of your refusing to do so will be appreciated.

You can readily understand the considerable trouble which would be involved in making a formal legal tender in cash to you of the amount in question. I feel certain that your attitude will not be such as to require us to resort to this extremity.

Very truly yours, W. C. Kirkpatrick, President.

WCK:nfg

Gov. Ex. 430

Sibley Memorial Hospital
and
Lucy Webb Hayes Nurse Training School
1140 North Capital Street
Washington, D. C.

Lewis H. Taylor, M. D., President
Miss Edith V. Youngquist, Treasurer
Mrs. Helen Shoemaker, R. N., Acting Superintendent of Nurses

August 30, 1938.

Mr. Howard F. Vickery, c/o Mr. W. C. Kirkpatrick, Pres., Group Health Association, Inc., 1427 Eye Street, N.W., Washington, D. C.

DEAR MR. VICKERY:

Receipt is acknowledged of a letter of Group Health Association, dated August 28, 1938, with the enclosure being a

certified check in the amount of $19.00 therein referred to. Said letter purports to have been sent in your behalf.

The check is returned to you herewith, with the request, as previously made in our letter addressed to you under date of August 12, 1938, that you pay the amount of your indebtedness to this Hospital in cash.

Yours very truly, Lewis H. Taylor, M.D., President.

LHT:CR
Enclosure

Gov. Ex. 358

November 18, 1937.

Dr. Lewis H. Taylor, President, Sibley Memorial Hospital, 1140 N. Capitol Street, N.W., Washington, D. C.

MY DEAR DR. TAYLOR:

I acknowledge with thanks your courteous letter of November 17th, relative to the request contained in my letter to you of November 8th.

I note that by unanimous vote the Local Board of Directors instructed the Acting Chairman to appoint a special committee of three to thoroughly investigate and study the whole question, and that the entire matter with recommendations will then be referred back to the Local Board of Directors for such action as they may deem necessary or advisable. In view of your statement that inasmuch as the granting of these requests will necessitate a complete revision of the rules and regulations covering the admission and treatment of patients, I cannot help by feel that the approach by the Local Board of Directors is both logical and sound.

In this connection, may I say that if the Officers, Trustees or Members of the Medical Staff of the Group Health Association can be of any assistance to the Special Committee, to the end that they may reach a proper conclusion after being informed of all of the facts and circumstances, we will be very happy to have you let us know. Furthermore, the Officers, Trustees and Members of the Medical Staff of the Group Health Association would be pleased to have the members of the Special Committee visit and in-

spect the Clinic, which is located at 1328 Eye Street, N.W., at any time convenient to them.

With very sincere regards, I am

Cordially yours, William F. Penniman, President.

Gov. Ex. 365

Group Health Association

Incorporated

1328 Eye Street, N. W.

Washington, D. C.

November 8, 1937.

Mr. Henry P. Blair, Chairman, Executive Committee, Episcopal Ear, Eye, Nose and Throat Hospital, 801 Colorado Building, Washington, D. C.

DEAR MR. BLAIR:

For your information, I am attaching hereto a copy of a letter addressed to the Episcopal Ear, Eye, Nose and Throat Hospital, requesting permission to admit patients who are members of the Group Health Association to the hospital upon the request of the Medical Director.

Also, a request to permit Dr. Raymond E. Selders, Surgeon, who is attached to the staff of the Group Health Association, to attend these patients while hospitalized.

For your further information, there is attached a record of Dr. Selders' education, training and experience.

Your assistance in obtaining prompt and favorable action will be very much appreciated.

Very truly yours, William F. Penniman, President.

Encls.

Gov. Ex. 383

February 2, 1938.

Colonel P. M. Ashburn, Superintendent, Columbia Hospital for Women, 25th & L Streets, N. W., Washington, D. C.

DEAR COLONEL ASHBURN:

I have before me your letter of December 15, 1937, addressed to Mr. William F. Penniman. In your letter you

stated that the Medical Board of your hospital would meet on December 23 to make a recommendation with respect to the application of Dr. Raymond E. Selders for privileges of the courtesy staff of your hospital.

The purpose of this letter is to ask whether or not consideration of Dr. Selders' application has yet been had.

We will appreciate very much receiving a reply from you.

Very sincerely yours, W. C. Kirkpatrick, President.

WCK:bj.

Gov. Ex. 439

July 28, 1938.

Very Rev. Arthur A. O'Leary, S.J., President, Georgetown University, Washington, D. C.

MY DEAR FATHER O'LEARY:

In view of Justice Bailey's decision yesterday establishing the legality of Group Health Association, Inc., it is respectfully requested that Dr. Raymond E. Selders, a member of our staff, be admitted to the courtesy staff of Georgetown University Hospital, and that he may attend members of this Association admitted as patients there.

We shall appreciate the courtesy of an early reply.

Very truly yours, W. C. Kirkpatrick, President.

July 28, 1938.

Received letter from Group Health Association, Inc.
Very Rev. Arthur A. O'Leary, S.J., President, Georgetown University, Washington, D. C. By H. Dolan.

Gov. Ex. 444

July 28, 1938.

Mr. Fred McGee, President, Board of Trustees, National Homeopathic Hospital, Second and D Streets, N. W., Washington, D. C.

MY DEAR MR. MCGEE:

In view of Justice Bailey's decision yesterday establishing the legality of Group Health Association, Inc., it is

respectfully requested that Dr. Raymond E. Selders, a member of our staff, be admitted to the courtesy staff of National Homeopathic Hospital, and that he may attend members of this Association admitted as patients there.

We shall appreciate the courtesy of an early reply.

Very truly yours, W. C. Kirkpatrick, President.

July 28, 1938.

Received letter from Group Health Association, Inc.

Mr. Fred McGee, President, Board of Trustees, National Homeopathic Hospital, Second and D Streets, N. W. By E. Cox.

Gov. Ex. 448

February 2, 1938.

Dr. C. C. Caylor, Secretary, Providence Hospital, 2nd and D Streets, S. E., Washington, D. C.

MY DEAR DR. CAYLOR:

This will refer to your letter of November 18, 1937, addressed to Mr. William F. Penniman, and also to Mr. Penniman's reply of December 14, 1937, both of which refer to an application of Dr. Raymond E. Selders, a member of the staff of Group Health Association, Inc., for privileges of the courtesy staff at Providence Hospital.

Inasmuch as this question is of great importance to us, we would very much appreciate receiving some word from you as to what action has been taken by the Committee on Surgical Privileges referred to in your letter of November 18, 1937.

Very sincerely yours, W. C. Kirkpatrick, President.

WCK:bj.

Gov. Ex. 449

July 28, 1938.

Sister M. Rosa, Acting President, Board of Trustees, Providence Hospital, Second and D Streets, S. E., Washington, D. C.

My dear Sister Rosa:

In view of Justice Bailey's decision yesterday establishing the legality of Group Health Association, Inc., it is respectfully requested that Dr. Raymond E. Selders, member of our staff, be admitted to the courtesy staff of Providence Hospital, and that he may attend members of this Association admitted as patients there.

We shall appreciate the courtesy of an early reply.

Very truly yours, W. C. Kirkpatrick, President.

July 28, 1938.

Received letter from Group Health Association, Inc. Sister M. Rosa, Acting President, Board of Trustees, Providence Hospital, Second and D Streets, S. E., Washington, D. C. By S. Finan.

Gov. Ex. 462

Group Health Association

Incorporated

1328 Eye Street, N. W.

Washington, D. C.

March 1, 1938.

Casualty Hospital. To Officers and Trustees of the Hospitals of Washington, D. C.

Dear Sirs:

There are approximately five thousand citizens of Washington representing 19 agencies of the United States Government who have joined together to obtain medical treatment and hospitalization through the facilities of Group

Health Association, Inc. A crisis has developed due to the fact that the members of this group are being denied treatment by licensed physicians and surgeons of their own choice in the hospitals of the District of Columbia.

Since the organization of Group Health Association, Inc., in November, 1937, sincere effort has been made to secure the cooperation of hospitals in Washington. To date, no action has been taken by this Association which might react unfavorably against the hospitals. Unfortunately however, these efforts have not met with success and it is the opinion of this group that it is being discriminated against unjustly.

It is hoped that a greater mutuality of understanding will result in a better spirit of cooperation. To this end you are invited to attend a meeting on Thursday night, March 3rd, to be held in Room A, Interstate Commerce Commission Building, at eight o'clock. Room A is on the first floor of the Interstate Commerce Commission Building on Constitution Avenue near the corner of Constitution Avenue and 12th Street, N. W.

This invitation is extended to the trustees, superintendents and heads of medical staffs of the Washington hospitals in a friendly effort to cooperate in the interests of citizens and their dependents who are members of this voluntary association.

Sincerely yours, (Signed) R. T. Berry, Secretary.

Gov. Ex. 470

The Medical Society of the District of Columbia

Successor (1911) to the Medical Society of the District of Columbia, Founded September 26, 1817, and the Medical Association of the District of Columbia, Founded January 11, 1833.

1718 M Street

Washington

Office of Secretary-Treasurer.

December 2, 1937.

Chief of Staff, Georgetown University Hospital, 35th and N Streets, Northwest, Washington, D. C.

DEAR DOCTOR:

Pursuant to formal action of the Medical Society of the

District of Columbia, in session on the evening of December 1, 1937, the attached resolution is sent you.

Very truly yours, (Signed) C. B. Conklin, M.D., Secretary.

CBC/dw. Encl.

The Medical Society of the District of Columbia

1718 M Street

Washington

Resolution adopted by the Society, in session on the evening of December 1, 1937:

Resolved, That as a matter of educational policy the Medical Society of the District of Columbia strongly recommends that all hospitals engaged in the teaching and training of residents, interns, and nurses, where possible, follow the recommendation of the American Medical Association regarding the constitution of their entire Medical Staffs, namely, that each appointee be a member of the Medical Society of the District of Columbia or a local medical society in this immediate neighborhood and a member of the American Medical Association.

Gov. Ex. 471

Georgetown University Hospital
Washington, D. C.

November 18, 1937.

Secretary, District Medical Society, 1718 M Street N. W., Washington, D. C.

Dear Doctor:

The Executive Staff of Georgetown University Hospital is anxious to have the opinion of the District of Columbia Medical Society on the following questions:

What stand shall the members of the Hospital Staff take toward Dr. Penhallow and his patients as regards to consultation?

Is or is not Dr. Penhallow a member of the American Medical Association?

What is the opinion of the Society concerning the members who are now engaged with the H. O. L. C. as regards to consultation by Hospital Staff members and the admission to the Hospital of their patients and those of Dr. Penhallow?

Very truly yours, V. J. Dardinski, M. D., Secretary of the Executive Staff.

Gov. Ex. 477

Medicine (Doctors on Medical Service)

1938

Atkinson, Wade H.	Ball, Geo. L.
Argy, Wm. P.	Ballinger, Wm.
Adams, Roy D.	Barnhart, Grant S.
Abernathy, Thos. J.	Bateman, Jos. J.
Arnold, John S.	Battles, Saml.
Alpher, Isadore M.	Bauersfeld, Herbert
Abramson, Herbert	Becker, Jos. M.
Abbe, Truman	Benjamin, Saml.
Bain, S. B.	Biggs, Jos. R.
Baker, Wyrth P.	Blajwas, Abe
Bail, John G.	Bloedorn, Walter
Bankhead, J. M.	Bou, Alfred L.
Barry, Edmund	Bowen, Wm. S.
Battle, Lewis J.	Brady, J. Chester
Bauersfeld, Emil G.	Broocks, Edw. B.
Beale, Robt. S.	Brown, Grafton T.
Behrend, Edwin B.	Brue, Peter P.
Birdsall, Gregg C.	Bullard, Dexter M.
Bliss, Chas. L.	Burbank, Caryl
Bosworth, Robt. J.	Burns, Wm. P.
Bowne, Chas. J.	Burka, Irving
Braden, Frank W.	Cake, Chas. P.
Brainin, Wm.	Connolly, Aloysius
Brooks, J. Lester	Crain, Darrell
Brown, Leo T.	Calver, Geo. W.
Brumbraugh, G. M.	Campbell, Neil P.
Bullock, John	Carbo, Ralph F.
Baker, May D.	Carroll, Chas. T.
Brotman, Irving	Castell, Louis B.
Baker, Robt. W.	Cate, L. Huntley

Chase, Morris
Chinn, Austin B.
Choisser, Roger M.
Claytor, Thomas
Coale, Edith S.
Cohen, Roger S.
Colvin, H. Lynn
Conley, John
Conrad, Thos.
Cooper, Linn F.
Cornet, L. A.
Coulter, A. Barklie
Crawford, Chas. B.
Crispy, Edwin S.
Crosson, Henry J.
Culver, C. W.
Cardwell, J. Leland
Cousins, Sidney
Cajigas, Tomas
Campbell, Chas.
Canada, Chas. C.
Carr, Elma B.
Carter, Hill
Castell, Richard B.
Chadwick, DeWitt
Chickering, Eliz
Clark, Wm. Earl
Clayman, David
Cohen, Ralph
Collins, Thos. F.
Conklin, C. B.
Conlon, Robert
Constas, John
Corley, Karl C.
Costello, James R.
Courtney, Francis
Creswell, Geo. W.
Cross, Allen S.
Crowe, John W.
Cummings, Jas. G.
Daniels, Worth B.
Davidson, Edw. Y.
Davis, Hugh J.
DeMayo, John L.
Detwiler, Robt. H.
Diatz, Philip
Donahue, Matthew E.
Dooley, Lucile
Duehring, Frank E.
Dunkley, Richard E.
DeButts, Richard E.
Dunn, Wm. L.
Daughton, Alva Duckett
Davidson, Jas. F.
Demas, Chas. J.
Dessoff, Saml.
Detwiler, Wm. S.
Diener, Saml. M.
Donnally, Harry H.
Dortzbach, Karl
Duffey, Depue H.
Dyke, Wm.
Dewey, Geo.
Ecker, Lewis C.
Ellison, Everett M.
Eppard, Geo.
Elliott, Henry R.
Everett, John
Earnest, John P.
Eckhardt, John C.
English, M. A.
Evans, And. B.
Ethridge, Clayton B.
Fierst, Chas.
Fischer, Melville
Ford, Rowland H.
Foxwell, Raymond
Freeman, Walter
Ferguson, C. E.
Finucane, Danl. L.
Fletcher, H. M.
Foster, Stuart O.
Foye, Amelia
Fugitt, Elmer W.
Gwynn, Henry B.
Gordon, Leon S.
Glover, Mervin W.
Gladding, Walter

Geier, Fred A.
Gurwin, Bernard J.
Goldenberg, Carl
Glenn, J. B.
W. T. Gill, Jr.
Gard, Perry Wm.
Hadley, Ernest E.
Halley, Chas. R. L.
Hardin, B. L., Jr.
Harnsberger, Chas. W.
Heiges, Lynwood
Hendry, Ernest S.
Higgins, Eugene W.
Hodgkins, Bradley D.
Holden, Raymond T.
Horvath, Frank S.
Howard, S. W.
Huffman, Geo. R.
Hurston, H. M.
Hussey, Hugh H.
Havell, Robt. B.
Hadley, Henry
Hardesty, W. S.
Harmon, Robt. H.
Heath, A. Fife
Heller, Jos. M.
Hertzberg, Herman
Hilton, James F.
Hoffman, Herman S.
Hornaday, Frank A.
Hough, Wm. H.
Howlett, H. H.
Hunter, Oscar B.
Hurtt, Harry
Hyde, Chas. W.
Irving, L. M.
Jordan, J. R.
Jeffries, Jos. A.
Jackson, Ruth
Judson, John
Karpeles, Kate
Katzman, Howard
Kebler, Lyman F.
Keliher, Thos.
Kennedy, Jos. V.
Kiessling, Alice
King, Allen E.
Kittredge Elis
Krause, E. A.
Kreglow, Alan F.
Krick, Jerome J.
Karpeles, Simon
Kaufman, Harry M.
Keilty, Robt. A.
Kelly, Thos.
Key, Sothoron
Kincheloe, Chas.
King, Clapham
Kinsbergen, Maurice V.
Kossow, Maurice J.
Kretching, Wilhelm
Kress, Lauretta E.
Lalley, Chas.
Lambert, Wm. C.
Lee, Thos. S.
Lemeshewsky, Geo. P.
Leonardo, Alex C.
Lewis, Arthur H.
Lichtman, Paul
Lindsay, J. W.
Litvin, Philip
Logan, John A.
Levin, Isadore
Lyon, James A.
Lafsky, Benj. B.
Lalley, Wm. J.
Lee, Allen E.
Leffler, Harrison H.
Leonard, B. W.
Levitt, L. P.
Lewis, Edw.
Lind, John E.
Little, A. B.
Loftus, Jas. M.
Lane, Virginia E.
Lowden, Henry M.

McCarthy, J. J.
James G. McKay
McLean, Marvin M.
McHale, J. J.
McLeod, John H.
McNutt, Agnes L.
Macon, Edw. B.
Mandelos, N. A.
Marbury, C. C.
Markwood, Emmett H.
Mattare, John
Mattingly, Thos. E.
Meyer, Wm.
Miller, W. S.
Mistretta, F. H.
Mitchell, J. Ernest
Moody, Terrell
Morgan, Wm.
Morse, E. C.
Moss, Fred A.
Myers, Brayton
MacClatchie, L. K.
McChesney, F. M.
McLarney, Edw.
McEnerney, Chas.
McNitt, Arnold
Macatee, H. C.
Mallory, Wm. J.
Manganaro, R. N.
Maret, Raymond
Martyn, H. E.
Mattingly, Richard V.
Meiman, W. G.
Miller, V. Beveridge
Minor, John
Mitchell, C. W.
Monat, Henry
Moore, W. C.
Morehart, Frederick
Moser, James M.
Murray, Raymond W.
Myers, Walter K.
Naiman, Benj. A.
Newman, Sigmund
Nichols, John B.
Nimetz, Aaron
Norcross, Alfred
Notes, Bernard
Nealon, Stephen W.
Nicklas, Edw. W.
Nicholas, Margaret
Noland, Stacy T.
Norris, L. B.
O'Brien, John F.
O'Keefe, James A.
Orem, John F.
Page, R. M.
Palmer, Alfred M.
Parent, Ernest
Payne, John R.
Peabody, Jos. W.
Perkins, Wm. R.
Perry, B. C.
Perry, Matthew W.
Pincock, Glen
Plaster, H. G.
Porton, S. P.
Prentiss, D. W.
Preston, John F.
Price, Weldon A.
Prosperi, Milton H.
Protas, Maurice
Purse, Grace
Puryea, Wm. G.
Quayle, Edgar E.
Queen, Greenville B.
Quick, Ralph
Raffel, Wm.
Ransdell, Rob't.
Ransom, C. A.
Read, B. R.
Ready, Francis J.
Reed, J. A.
Reede, Edw. H.
Reisinger, John C.
Repetti, Fred

Ritchie, W. S.
Rice, Eugene C., Jr.
Robbins, Chas. S.
Robey, Wm. I.
Rod, Isadore
Rodis, Isadora
Rogers, J. F.
Rolls, J. A.
Roman, F. O.
Rosenberg, Rich. H.
Rosenthal, Sanford M.
Rosser, M. T.
Rossiter, Thos. J.
Rude, Gilbert B.
Ruedy, E. C.
Ruffin, Sterling
Rule, Amy
Rusmiselle, Leslie
Rutkoski, I.
Ryland, Chas. P.
Scheele, And. F.
Schneider, Antoine
Schreiber, Henry R.
Schultz, F. Bernard
Schuman, Nathan J.
Schwartzman, Aaron S.
Schwarzmann, John U.
Selinger, Maurice A.
Sexton, R. Lyman
Shapiro, Hayman D.
Shea, Frank R.
Shoemaker, Norman C.
Shull, E. C.
Silverman, Carl
Silverman, Morris
Sims, Wm. B.
Snowden, Edgar
Speer, Alma J.
Spigel, Harry A.
Spire, R. Lee
Stanley, Arthur C.
Steinman, Erwin
Stevenson, Ernest L.
Stokes, Walter
Stone, Grace
Stout, Jos. D.
Stuart, Dan'l. D. V.
Sugar, Sam'l. J.
Sullivan, Richard T.
Taylor, Paul N.
Templeton, Earl R.
Tewksbury, Wm. D.
Thomas, John D.
Thomas, Wm. G.
Thomas, Wm. R.
Thompson, J. L., Jr.
Thompson, Millard F.
Tilton, J. A.
Towner, Frank H.
Twogood, Merton E.
Valentine, A. W.
Verbrycke, J. Russell, Jr.
Walters, Willard B.
Warren, J. Francis
Watkins, Sam'l. E.
Weinberg, H. Blacker
Weller, George L.
Whitmore, Eugene
Wilner, Paul R.
Wynkoop, James C.
Wardrop, Wm. B.
Washington, Dan'l. B.
Weems, Benj. F.
Wells, R. L.
White, Davenport
William, Frank L.
Wilson, E. C.
Yater, Wallace M.
Yesko, Stephen A.
Zehner, Harry

Doctors on Surgical Service

Surgery

Abramson, Alfred
Atkinson, Walter
Ault, Garnet
Bachrach, Louis
Barr, E. Osmun
Borden, Dan'l. L.
Bradley, Thomas
Briggs, Crenshaw
Cafritz, Edw. A.
Cahill, James, Jr.
Campbell, Elliott
Caulfield, Philip
Chase, Wm. W.
Coffey, Rob't. J.
Collina, J. Floyd
Davis, Edgar W.
Dean, Benjamin
DeSavitsch, Eugene
DeVito, Michael
Fifer, Carson
Fishback, Fred C.
Fulcher, O.
Gaffney, Leo B.
Gannon, J. A.
Gantz, Frank E.
Golden, Benj.
Grass, Edw. J.
Gwynn, W. C.
Hawfield, James
Hess, Valentine
Hildenbrand, Emil J. C.
Horgan, Edmund
Horgan, Jos.
Horwitz, Alec
Jackson, Richard L.
Kelley, J. Thomas
Kerr, Harry H.
Lewis, Harry S.
Lyons, John H.
Mankin, J. Ward
Marbury, Wm. B.
Martel, Leo A.
McGovern, F. X.
McNamara, C. Edwin
Mitchell, James F.
Moran, Rob't E.
Morris, W. Ross
Mourot, Arthur J.
Neill, Thos. E.
Nutting, Geo. K.
Orr, W. J. B.
Piggott, J. Burr
Putzki, Paul S.
Reeves, W. P.
Richtmeyer, Duane
Riddick, Arch L.
Sager, W. Warren
Sanderson, Fred
Schoenfeld, Herbert H.
Shugrue, John
Schwartzbach, Saul
Shearer, J. B.
Smiler, Norman N.
Smith, Howard L.
Small, Wm. D.
Sprigg, Wm.
Strine, H. F.

Surgery (Doctors having courtesy privileges in Surgery)

Warfield, J. Ogle
White, Chas. S.
Reeves, Geo. W.
Creer, J. Roscoe
Threadgill, Francis D.
Virnstein, John E.
Weitzman, Harry S.
Willcutts, Morton D.
Wynkoop, John
Gillen, James H.

Urology (Doctors having Courtesy Privileges Urological Cases)

Andrus, Carlton
Belt, Norvell
Chenery, Alan J.
Dorman, H. N.
Fadeley, James M.
Fowler, Harry A.
Fuller, Homer G.
Gable, George R.
Hagner, Francis R.
Herbst, Wm. R., Jr.
Herschman, Myer J.
Hooe, Arthur R.
Howze, Chas. P.
Jarman, W. Dabney
Kemble, Adam
LeComte, R. M.
Omohundro, Miles P.
Ottenberg, Gilbert
Pelzman, I.
Reuter, Fred A.
Sterling, W. C.
Thompson, Thos. C.
Young, Wm. G.

Orthopedics (Doctors having Courtesy Privileges in Orthopedics)

Engh, Otto Anderson
Foley, Thos. M.
Hanby, John Estes
Hand, Frank M.
Hall, Custis Lee
Kelly, Edward B.
Larkin, Edward
Leadbetter, Guy
McLain, John E.
Neviaser, Julius S.
O'Donnell, Paul
Pelland, P. O.
Shands, A. R. (Emeritus)
Talbot, J. A.

Anaesthesia (Drs. Having Courtesy Privileges in Anaesthesia)

Bolton, Robt. M.
Bruner, Weston, Jr.
Chipman, C. N.
Gaines, J. M.
Jackson, Richard L.
Katzman, Sollie
Kreiselman, Jos.
LeMerle, Eugene L.
Francis, MacDonald
Mann, Jesse
Schuman, Nathan
Speidel, F. G.
Stubbs, Donald
Warner, Otto N.

Ophthalmology (Drs. Having Courtesy Privileges in Ophthalmology)

Bockoven, Sterling
Burke, J. W.
Costello, Robt. F.
Costenbader, Frank D.
Cummings, Edw. J.
Davis, W. T.
Dessoff, Jos.
Downey, H. R.
Greear, James N., Jr.
Griffith, J. Beaty

Green, Louis
Gookin, Edw. R.
Goodman, Edgar
Hyde, LeRoy
Henning, Carl
Hammett, Chas. M.
Kennedy, Michael
Lamb, Robt. S.
Lloyd, John R. P.
Morrison, R. L.
Moss, L. Connor
Muncaster, S. B.
Newell, Wm. S.
Pendexter, Ralph
Scala, Norman P.
Sheppard, Ernest

Otolaryngology (Drs. Having Courtesy Privileges in this Service)

Alfaro, Victor R.
Alexander, Saml. A.
Baber, John M.
Bennett, A. B.
Bradley, Jeter C.
Breeding, Earle G.
Brooks, Richmond A.
Constantinople, P. S.
Cummings, Edw. J.
Davis, David
Davies, Harry F.
Earley, James H.
Feldman, Irvin
Fischer, Aubrey D.
Flynn, James A.
Gill, Grover Bache
Hantman, Irvin
House, Hugh
Jenkins, Wm. H.
Jarman, Bernard L.
Johnson, Don R.
Kearney, Richard
Kemp, R. J.
Knowlton, Don S.
Luber, Saml.
Mankin, G. Haven
Mason, Wm. B.
Melov, Wm. C.
Moffett, Danl. B.
Morgan, W. A.
Middlestaedt, Carl D.
O'Brien, E. M.
Sawyer, Leroy
Schreiber, F. C.
Shepherd, E. R.
Sparks, W. C.
Sullivan, Richard T.
Tegge, C. W.
Tibbetts, L. B.
Trible, G. B.
Vann, H. King
Walker, Allen R., Jr.
Wells, W. A.
Wilkinson, R. W.
Williams, Thos. F.
Zinkham, A. M.

Minor Surgery (Drs. Having Courtesy Privileges in Minor Surg. Those Marked "Medicine" also have Privileges in that Service)

Baber, John
Bakerm, Wyrth P., Med.
Ball, John G., Med.
Cardwell, J. Leland, Med.
Connolly, Aloysius, Med.
Heath, A. Fife, Med.
Jordan, J. R., Med.
Keane, Martin J.

Lemeshewsky, Geo. P., Med.
Leonardo, Alex., Med.
McLarney, Edw. P., Med.
Meiman, W. G., Med.
Morse, E. C.
Myers, Brayton, Med.
Rutkoski, Med.
Schultz, F. Bernard, Med.
Schuman, Nathan G., Med.
Schwarzmann, John U.
Stevenson, Ernest L., Med.
Sullivan, Richard T., Med.
Wood, H. A.
Young, Jos. R.

Pediatrics

Berenstein, Stanley H.
Blair, Montgomery, Jr.
Detwiler, Robt., Med.
Greenberg, Milton N.
Lachman, Sander B.
Lewis, Edw., Med.
Millwater, Chas. A.
Mitchell, Reginald H.
Ong, Harry A.
Price, Weldon A., Med.
Wall, Jos. S.
Wernstein, David
Bier, Robt.
Burdick, Wm. F.
Copeland, Edgar P.
Greenlaw, Jos. J.
Leech, Frank
McLendon, Preston A.

Dermatology

Anderson, Harry F.
Eichenlaub, Frank F.
Ellis, Francis A.
Fields, Russell J.
Goodman, Reuben
Hazen, Henry H.
Kittredge, Herman F.
McCarthy, Lee
Sandler, J. Lewis
St. Clair, Francis G.
Teichman, Walter O.

Doctors having courtesy privileges in following services

Pathology
Dr. Chas. G. Aronstein
Dr. Lester Neuman
Allergy
Dr. Harry S. Bernton
Dr. Robt. S. McGrath
Neuropsychiatry
Dr. Alice H. Kiessling, Med.
Neurosurgery
Dr. James W. Watts
Dr. John Shugrue
Plastic Surgery
Dr. Wm. Meloy—Otolaryngology also
Dr. Robt. E. Moran—Also surgery
Dr. Michael DeVito—Also surgery
Dental Surgery
Dr. Woodson T. Birthright
Geo. R. Ellis
Frederick J. Hess
Harry Kaplan
Dudley T. King
Danl. F. Lynch
Jas. L. McGrath
Wm. D. Monroe
Howard Newton
Wm. I. Ogus
Lawrence Smallwood
Chas. Smith Jr.
Dr. Sterling Mead

Gynecology

Drs.	Kushner, David
Wm. H. Beard	McNamara, C. Edwin (surg)
Walter Willard Boyd	McNitt, H. J. R.
L. Lee Cockerille	Mundell, J. J.
John L. Conley, Med.	Nathanson, Esther S.
James Roger Costello, Med.	Nordlinger, Geo.
Cromer, J. Keith	O'Donnell, Roger Jr.
Crowley Jerome F.	Parker, Howard P
Cusack Wm. J.	Preece, A. A.
Darner, Henry L.	Ramsey, Herbert P.
Fifer, Carson L.	Reeves, Clyde P.
Jansen, J. Russell	Reeves, Geo. W.
Jackson, Virgil B. Emeritus	Richwine, Alf. H.
Kain, Gladys	Rogers, Floyd S.
Kane, Howard F.	Silvester, Richard L.
Kotz, Jacob	Titus, E. W.

Gov. Ex. 478

The Medical Society of the District of Columbia, 1718 M Street, N. W., Washington.

July 29, 1937.

To the Superintendent:

Pursuant to action of the Executive Committee, held on the evening of July 12, 1937, and in fulfilment of Chapter IX, Article IV, Section 5 of the Constitution, your attention is hereby called to the list of organizations, groups and individuals herewith enclosed. The approved list is on file with the Secretary's Office. The amendment is now in force. Any violation thereof will make a member liable according to the provisions of the Constitution:

Chapter IX, Article IV, Sec. 5:

"No member of the Society shall engage in any professional capacity whatsoever with any organization, group or individual, by whatever name called or however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, which has not been approved by the Society.

"The Executive Committee is authorized and directed to prepare an approved list of organizations, groups and individuals, by whatever name called and however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, and the same shall be kept in the office of the Secretary-Treasurer. Before any such organization, group or individual can be placed on the approved list of the Society, such organization, group or individual, or the member of the Society proposing professional relations therewith, shall submit to the Compensation, Contract and Industrial Medicine Committee such evidence as the Committee or the Society may require showing the character, activities, financial condition and ethical standards of said organization, group or individual, and after considering the same, said committee shall make a report of its investigation and findings to the Executive Committee for such action as it may deem necessary."

Very truly yours, C. B. Conklin, M. D., Secretary.

C-O

The Medical Society of the District of Columbia, 1718 M Street (Telephone: District 3111)

Approved list of Organizations, Groups and Individuals, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof. (Chapter IX, Article IV, Section 5 of the Constitution.)

1. All members of the Medical Society of the District of Columbia.

2. Medical staffs of all hospitals, institutions and clinics, each member of which has been approved by the Medical Society of the District of Columbia.

3. The United States Government Medical Personnel on duty in the District of Columbia, or within 10 miles thereof, i. e., the United States Army, Navy, Public Health Service, and the Veterans' Administration.

4. The Health Officer and attached medical personnel.

5. Membership of the District of Columbia Dental Society.

6. Membership of the Homeopathic Medical Society.

7. Members of the Montgomery County (Md.), Prince Georges County (Md.), Fairfax County (Va.), and Arling-

ton County (Va.) Medical Societies, who reside within 10 miles of the District of Columbia.

8. Members of the Alexandria Medical Society.

9. The following Compensation Clinics:

	Operated by
Farragut Medical Clinic	Frank E. Gantz, M. D.
First Aid Station	Arch L. Riddick, M. D.
Harry M. Lewis Clinic	Harry M. Lewis, M. D.
Market Compensation Accident Clinic	M. J. Kossow, M. D.
Northeast Insurance Clinic	G. Henry Rawson, M. D.
Union Market Workmen's Compensation Clinic	Maxwell Hurston, M. D.
Washington Industrial Accident Clinic	Edward Clark Morse, M. D.
Washington Medical Building Workmen's Clinic	Charles S. White, M. D.

10. All medical personnel employed by the Federal or Municipal Governments within the District of Columbia or within 10 miles thereof.

11. Membership of the Medico-Chirurgical Society (colored Medical Society).

12. Membership of the Robert T. Freeman Dental Society (colored Dental Society).

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The Medical Society of the District of Columbia

Successor (1911) to the Medical Society of the District of Columbia, Founded September 26, 1817, and the Medical Association of the District of Columbia, Founded January 11, 1833.

1753

216

1718 M Street

Washington

Office of Secretary-Treasurer.

December 2, 1937.

Chief of Staff, Emergency Hospital, 1711 New York Avenue, N. W., Washington, D. C.

DEAR DOCTOR:

Pursuant to formal action of the Medical Society of the District of Columbia, in session on the evening of December 1, 1937, the attached resolution is sent you.

Very truly yours, C. B. Conklin, M. D., Secretary.

CBC/dw Encl.

The Medical Society of the District of Columbia

1718 M Street

Washington

Resolution adopted by the Society, in session on the evening of December 1, 1937:

Resolved, That as a matter of educational policy the Medical Society of the District of Columbia strongly recommends that all hospitals engaged in the teaching and training of residents, interns, and nurses, where possible, follow the recommendation of the American Medical Association regarding the constitution of their entire Medical Staffs, namely, that each appointee be a member of the Medical Society of the District of Columbia or a local medical society in this immediate neighborhood and a member of the American Medical Association.

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Dr. Robert R. Hottel
Dr. Duane C. Richtmeyer
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3. Dr. J. C. Eckhardt, 1834 Irving St., N. W., Co. 9431
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5. Dr. James M. Fadeley, 1835 Eye St., N. W., National 7200
6. Dr. A. C. Gray, 1242 Newton St., N. E., North 3674
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23. Dr. Lewis H. Taylor, The Cecil, Metropolitan 4966
24. Dr. Charles S. White, 1801 Eye Street, N. W., National 7200

The Medical Council meets on the 2nd Tuesday of each month, at 8:00 p. m. (No meetings during July and August.)

The Clinical Division meets on the 2nd Tuesday of each month, at 8:30 p. m. (No meetings during July and August.)

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Dr. Lewis H. Taylor The Cecil	ME. 4966
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Dr. A. C. Gray 1242 Newton St., N. E.	NO. 3674
Dr. Joseph F. Elward 1726 Eye St., N. W.	DI. 1322

1938

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1. Dr. F. Y. Donn, 4800 Eighth St., N. W., Adams 8136
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Dr. W. G. Farwell
Dr. C. E. Ferguson
Dr. Max E. Feldman
Dr. Philip I. Frohman
Dr. E. A. Forcione
Dr. A. Fischer
Dr. Charles Finley
Dr. G. R. Gable
Dr. J. M. Gaines
Dr. J. A. Gannon
Dr. F. E. Gantz
Dr. James H. Gillen
Dr. H. S. Gates
Dr. Wm. T. Gill, Sr.
Dr. Wm. T. Gill, Jr.
Dr. Nathan Glaubach
Dr. R. Goodman
Dr. Wm. D. Goodman
Dr. Vincent Gould
Dr. E. W. Graeff
Dr. A. C. Gray
Dr. Milton Greenberg
Dr. B. J. Gurwin
Dr. Leo B. Gaffney
Dr. Benjamin Golden
Dr. Aaron Gerber
Dr. Frank B. Geibel
Dr. L. C. Gay
Dr. A. B. Gordon
Dr. L. W. Harris
Dr. E. E. Hadley
Dr. Custis Lee Hall
Dr. F. P. Hannon
Dr. Irvin Hantman
Dr. Robert H. Harmon
Dr. C. W. Harnesberger

Dr. J. F. Harrington
Dr. Robert Havell
Dr. Clayton Hawfield
Dr. J. Phelps Hand, Jr.
Dr. G. J. Hageage
Dr. S. W. Hawken
Dr. Fife Heath
Dr. L. M. Heiges
Dr. Carl Henning
Dr. Wm. P. Herbst
Dr. Myer Herschmann
Dr. H. Hertzberg
Dr. Valentine Hess
Dr. Roy F. Higgins
Dr. E. J. C. Hildenbrand
Dr. J. F. Hilton
Dr. Bradly D. Hodgkins
Dr. R. K. Hollingsworth
Dr. Mary Holmes
Dr. Edmond Horgan
Dr. Joseph Horgan
Dr. Henry Hornthall
Dr. Frank Horvath
Dr. Alec Horwitz
Dr. Robert R. Hottel
Dr. William J. P. Howard
Dr. J. M. Howe
Dr. Hugh Hudson, Jr.
Dr. W. C. Huff
Dr. Oscar B. Hunter
Dr. C. W. Hyde
Dr. V. B. Hungerford
Dr. J. H. Hazard
Dr. Harold M. Hobart
Dr. M. D. Harrison
Dr. Wm. A. Jack
Dr. Ruth Jackson
Dr. Jon Jansen
Dr. B. L. Jarmon
Dr. Don Johnson
Dr. Catherine Johnson
Dr. Richard L. Jackson
Dr. W. D. Jarman
Dr. Caroline Jackson

Dr. Donald W. Ingham
Dr. J. B. Jacobs
Dr. Millard Jeffrey
Dr. Gladys H. Kain
Dr. Howard F. Kane
Dr. James P. Kane
Dr. Howard Katzman
Dr. M. J. Keane
Dr. Morton S. Kaufman
Dr. H. W. Kearney
Dr. T. J. Kelly, Jr.
Dr. Adam Kemble
Dr. T. F. Keliher
Dr. Allen King
Dr. M. Van Kinsbergen
Dr. Jacob Kotz
Dr. S. E. Kramer, Jr.
Dr. A. F. Kreglow
Dr. Joseph Kreiselman
Dr. J. Krick
Dr. M. J. Kossow
Dr. D. H. Kushner
Dr. Franklin Kreuzburg
Dr. Clarence J. Kelley
Dr. Lewis A. Klein
Dr. T. G. Klumpp
Dr. B. P. Lafsky
Dr. Wm. J. Lally
Dr. Guy Latimer
Dr. Tom Latimer
Dr. T. F. Law
Dr. G. W. Leadbetter
Dr. B. W. Leonard
Dr. R. M. LeComte
Dr. Isadore Levin
Dr. A. C. Leonardo
Dr. Philip Litvin
Dr. Harry S. Lewis
Dr. Wm. E. Long
Dr. H. M. Lowden
Dr. T. F. Lowe
Dr. Daniel Lynch
Dr. H. S. Lewis
Dr. G. P. Lemiskewsky

Dr. L. W. Malin
Dr. K. Charles Latven
Dr. Harold Levine
Dr. Virginia S. Lane
Dr. B. Manchester
Dr. W. W. Martin
Dr. A. M. MacDonald
Dr. E. B. Macon
Dr. G. H. Magee
Dr. Wm. J. Mallory
Dr. J. W. Mankin
Dr. J. T. Mann
Dr. J. B. Marbury
Dr. Emmett Markwood
Dr. A. E. Marland
Dr. H. E. Hartyn
Dr. J. J. Mattare
Dr. T. Mattingly
Dr. R. V. Mattingly
Dr. R. S. McCeney
Dr. Francis McDonald
Dr. H. J. R. McNitt
Dr. E. P. McLarney
Dr. W. P. McNeill
Dr. R. J. McNulty
Dr. Charles M. Musso
Dr. A. Louise McNutt
Dr. G. H. McLain
Dr. Wm. C. Meloy
Dr. S. V. Meade
Dr. Fofo Mexitis
Dr. W. S. Miller
Dr. C. W. Mitchell
Dr. R. H. Mitchell
Dr. Brayton Q. Myers
Dr. T. Moody
Dr. Wm. A. Morgan
Dr. John E. Morris
Dr. Wm. Ross Morris
Dr. J. L. MacKavanaugh
Dr. H. T. Morse
Dr. W. B. Morse
Dr. W. B. Moyers
Dr. Herbert C. McClure

Dr. Donald Mitchell
Dr. J. J. Mundell
Dr. Wm. S. Murphy
Dr. Wm. A. Mess
Dr. A. J. Mourot
Dr. G. Martin
Dr. B. H. Menke
Dr. Ernest Michaelson
Dr. M. Mendelsohn
Dr. Julius Nevisser
Dr. Sigmund Newman
Dr. Howard Newton
Dr. A. C. Norcross
Dr. Roy Nicholson
Dr. J. H. Novick
Dr. Wm. A. Norton
Dr. H. E. Newman
Dr. Esther Nathanson
Dr. Leon Nathanson
Dr. S. M. Novack
Dr. R. O'Donnell, Jr.
Dr. J. A. O'Keefe
Dr. John Orem
Dr. Wm. I. Ogus
Dr. H. B. Orleans
Dr. M. F. Ottman
Dr. S. L. Owens
Dr. J. B. Orr
Dr. Francis J. O'Bryan
Dr. Albert Pagan
Dr. H. P. Parker
Dr. P. C. Pelland
Dr. D. Penhallow
Dr. W. R. Perkins
Dr. Ed. F. Pickford
Dr. M. Pickford
Dr. C. S. Pincock
Dr. Glen Pincock
Dr. J. B. Piggott
Dr. Walter Price
Dr. Weldon A. Price
Dr. Matthew White Perry
Dr. E. J. Parent
Dr. M. H. Prosperi
Dr. Paul S. Putzki
Dr. J. C. Pyles
Dr. A. A. Preece
Dr. Alfred M. Palmer
Dr. Edna F. Patterson
Dr. Henry L. Peckham, Jr.
Dr. John E. Payne
Dr. Russell C. Payne
Dr. H. P. Ramsey
Dr. G. H. Rawson
Dr. J. R. Raedy
Dr. Marie Ramme
Dr. Boyd Read
Dr. Wm. P. Reeves
Dr. F. X. Richardson
Dr. C. P. Reeves
Dr. B. W. Richwine
Dr. A. L. Riddick
Dr. W. S. Ritchie
Dr. Isadore Rod
Dr. J. A. Rolls
Dr. F. S. Rogers, Jr.
Dr. R. M. Rosenberg
Dr. M. T. Rosser
Dr. Wm. A. Ryon
Dr. C. P. Ryland
Dr. Ignatitus Rutkoski
Dr. L. T. Rusmisells
Dr. Isabel Reith
Dr. Murry M. Robinson
Dr. John Reisinger
Dr. Anna Tulman Rand
Dr. Louis Ross
Dr. C. F. Scalessa
Dr. Francis St. Clair
Dr. J. B. Sheffery
Dr. Fred Sanderson
Dr. F. Schreiber
Dr. Henry Schreiber
Dr. E. W. Schwartze
Dr. Petrena Shea
Dr. Saul Schwartzbach
Dr. R. L. Sexton
Dr. Frank Shaffer

Dr. William A. Shannon
Dr. J. P. Shearer
Dr. Richard Silvester
Dr. N. N. Smiler
Dr. Leo Solet
Dr. F. G. Speidel
Dr. R. Lee Spire
Dr. P. A. E. Stebbing
Dr. John U. Schwarzman
Dr. Harry Sacks
Dr. E. T. Stephenson
Dr. H. E. Steiman
Dr. Alfred Suraci
Dr. H. H. Strine
Dr. X. C. Suraci
Dr. Norman C. Shoemaker
Dr. F. N. Strawbridge
Dr. Carl Silverman
Dr. S. Speyer
Dr. Richard H. Spire
Dr. Leon Seley
Dr. S. Schwartz
Dr. Daniel Sondheimer
Dr. Sylvan A. Steiner
Dr. Lacy J. Salan
Dr. Joseph Bart Sheffery
Dr. J. T. Schnelly
Dr. Earl Templeton
Dr. F. D. Threadgill
Dr. Roy Anson Thornley
Dr. Joel A. Tilton
Dr. E. W. Titus
Dr. J. H. Trinder
Dr. Lyman Tibbetts
Dr. George Tolstoi
Dr. A. W. Valentine
Dr. H. D. Vazzana
Dr. S. F. Verges
Dr. Joseph J. Wallace
Dr. J. O. Warfield, Jr.
Dr. Otto N. Warner
Dr. J. C. Waters
Dr. W. B. Wardrop
Dr. D. L. Weinstein
Dr. J. F. Warren
Dr. D. B. Washington
Dr. C. A. Weaver
Dr. H. S. Weitzman
Dr. A. M. Wheeler
Dr. J. J. Whisman
Dr. C. S. White
Dr. F. L. Williman
Dr. H. A. Wood
Dr. J. C. Wynkoop
Dr. W. B. Walters
Dr. D. White
Dr. Oscar Wilkinson
Dr. Samuel H. Williams
Dr. Charles H. Wolohon
Dr. Allen Widome
Dr. Alvin E. Wode
Dr. B. P. Warren
Dr. Karl Haydon Wood
Dr. Alfred Wilson
Dr. Wm. G. Young
Dr. J. R. Young
Dr. Harry Zehner

Gov. Ex. 494

The Medical Society of the District of Columbia

1718 M Street, N. W.

Washington

July 29, 1937.

TO THE SUPERINTENDENT:

Pursuant to action of the Executive Committee, held on the evening of July 12, 1937, and in fulfilment of Chapter IX, Article IV, Section 5 of the Constitution, your attention is hereby called to the list of organizations, groups and individuals herewith enclosed. The approved list is on file with the Secretary's Office. The amendment is now in force. Any violation thereof will make a member liable according to the provisions of the constitution:

Chapter IX, Article IV, Sec. 5:

"No member of the Society shall engage in any professional capacity whatsoever with any organization, group or individual, by whatever name called or however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, which has not been approved by the Society.

"The Executive Committee is authorized and directed to prepare an approved list of organizations, groups and individuals, by whatever name called and however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, and the same shall be kept in the office of the Secretary-Treasurer. Before any such organization, group or individual can be placed on the approved list of the Society, such organization, group or individual, or the member of the Society proposing professional relations therewith, shall submit to the Compensation, Contract and Industrial Medicine Committee such evidence as the Committee or the Society may require showing the character, activities, financial condition and ethical standards of said organization, group or individual, and after considering the same, said committee shall make a report of its investigation and findings to the Executive Committee for such action as it may deem necessary."

Very truly yours, C. B. Conklin, M.D., Secretary.

The Medical Society of the District of Columbia

1718 M Street

(Telephone: District 3111)

Approved List of Organizations, Groups and Individuals, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof. (Chapter IX, Article IV, Section 5 of the Constitution.)

1. All members of the Medical Society of the District of Columbia.
2. Medical staffs of all hospitals, institutions and clinics, each member of which has been approved by the Medical Society of the District of Columbia.
3. The United States Government Medical Personnel on duty in the District of Columbia, or within 10 miles thereof, i. e., the United States Army, Navy, Public Health Service, and the Veterans' Administration.
4. The Health Officer and attached medical personnel.
5. Membership of the District of Columbia Dental Society.
6. Membership of the Homeopathic Medical Society.
7. Members of the Montgomery County (Md.), Prince Georges County (Md.), Fairfax County (Va.), and Arlington County (Va.) Medical Societies, who reside within 10 miles of the District of Columbia.
8. Members of the Alexandria Medical Society.
9. The following Compensation Clinics:

	Operated by
Farragut Medical Clinic	Frank E. Gantz, M. D.
First Aid Station	Arch L. Riddick, M. D.
Harry M. Lewis Clinic	Harry M. Lewis, M. D.
Market Compensation Accident Clinic	M. J. Kossow, M. D.
Northeast Insurance Clinic	G. Henry Rawson, M. D.
Union Market Workmen's Compensation Clinic	Maxwell Hurston, M. D.
Washington Industrial Accident Clinic	Edward Clark Morse, M. D.
Washington Medical Building Workmen's Clinic	Charles S. White, M. D.

10. All medical personnel employed by the Federal or Municipal Governments within the District of Columbia or within 10 miles thereof.

11. Membership of the Medico-Chirurgical Society (colored Medical Society).

12. Membership of the Robert T. Freeman Dental Society (colored Dental Society).

Gov. Ex. 495

The Medical Society of the District of Columbia

Successor (1911) to the Medical Society of the District of Columbia, Founded September 26, 1817, and the Medical Association of the District of Columbia, Founded January 11, 1833, 1718 M Street, Washington.

Office of Secretary-Treasurer

December 2, 1937.

Chief of Staff, Sibley Memorial Hospital, 1140 N. Capitol Street, Washington, D. C.

DEAR DOCTOR:

Pursuant to formal action of the Medical Society of the District of Columbia, in session on the evening of December 1, 1937, the attached resolution is sent you.

Very truly yours, C. B. Conklin, M. D., Secretary.

CBC/dw.
Encl.

The Medical Society of the District of Columbia

1718 M Street

Washington

Resolution adopted by the Society, in session on the evening of December 1, 1937:

Resolved, That as a matter of educational policy the Medical Society of the District of Columbia strongly recommends that all hospitals engaged in the teaching and training of residents, interns, and nurses, where possible,

follow the recommendation of the American Medical Association regarding the constitution of their entire Medical Staffs, namely, that each appointee be a member of the Medical Society of the District of Columbia or a local medical society in this immediate neighborhood and a member of the American Medical Association.

Gov. Ex. 500

The Medical Society of the District of Columbia

1718 M Street, N. W.

Washington

July 29, 1937.

TO THE SUPERINTENDENT:

Pursuant to action of the Executive Committee, held on the evening of July 12, 1937, and in fulfilment of Chapter IX, Article IV, Section 5 of the Constitution, your attention is hereby called to the list of organizations, groups and individuals herewith enclosed. The approved list is on file with the Secretary's Office. The amendment is now in force. Any violation thereof will make a member liable according to the provisions of the Constitution:

Chapter IX, Article IV, Sec. 5:

"No member of the Society shall engage in any professional capacity whatsoever with any organization, group or individual, by whatever name called or however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, which has not been approved by the Society.

"The Executive Committee is authorized and directed to prepare an approved list of organizations, groups and individuals, by whatever name called and however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, and the same shall be kept in the office of the Secretary-Treasurer. Before any such organization, group or individual can be placed on the approved list of the Society, such organization, group or individual, or the member of the Society proposing professional relations therewith, shall submit to the Compensation, Contract and Industrial Medicine Committee such

evidence as the Committee or the Society may require showing the character, activities, financial condition and ethical standards of said organization, group or individual, and after considering the same, said committee shall make a report of its investigation and findings to the Executive Committee for such action as it may deem necessary."

Very truly yours, C. B. Conklin, M. D., Secretary.

The Medical Society of the District of Columbia

1718 M Street

(Telephone: District 3111)

Approved List of Organizations, Groups and Individuals, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof. (Chapter IX, Article IV, Section 5 of the Constitution.)

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4. The Health Officer and attached medical personnel.
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6. Membership of the Homeopathic Medical Society.
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Market Compensation Accident Clinic	M. J. Kossow, M. D.

Northeast Insurance Clinic	G. Henry Rawson, M. D.
Union Market Workmen's Compensation Clinic	Maxwell Hurston, M. D.
Washington Industrial Accident Clinic	Edward Clark Morse, M. D.
Washington Medical Building Workmen's Clinic	Charles S. White, M. D.

10. All medical personnel employed by the Federal or Municipal Governments within the District of Columbia or within 10 miles thereof.

11. Membership of the Medico-Chirurgical Society (colored Medical Society).

12. Membership of the Robert T. Freeman Dental Society (colored Dental Society).

Gov. Ex. 504

Providence Hospital

Washington, D. C.

Regular Staff, 1938

Allman, Dr. Francis C.	Flynn, Dr. James A.
Angevine, Dr. Walter K.	Finnegan, Dr. J. F.
Argy, Dr. William P.	Fields, Dr. Russell J.
Bernton, Dr. Harry S.	Fadeley, Dr. James M.
Bowie, Dr. Andrew K.	Gillen, Dr. James H.
Cahill, Dr. James A., Jr.	Gaffney, Dr. Leo B.
Carbo, Dr. Ralph J.	Horgan, Dr. Edmund
Caulfield, Dr. Philip A.	Holden, Dr. Raymond T., Jr.
Caylor, Dr. Claude C.	Horgan, Dr. Joseph
Collins, Dr. Thomas F.	Hollingsworth, Dr. Russell K.
Conlon, Dr. R. J.	
Connolly, Dr. A. J.	Higgins, Dr. Roy F.
Cooper, Dr. R. U.	Hess, Dr. Valentine M.
Cummings, Dr. E. J.	Henning, Dr. Carl
Duehring, Dr. F. E.	Hawken, Dr. Stafford W.
Dunne, Dr. Francis W.	Kane, Dr. James P.
Ellis, Dr. George J.	Kelley, Dr. J. Thomas
Eisenberg, Dr. Herman	Kittridge, Dr. H. E.
Early, Dr. James H.	Lally, Dr. William J.
Fulcher, Dr. O. H.	Leibel, Dr. Casimir

Murphy, Dr. C. J.
Mundell, Dr. J. J.
Moore, Dr. T. V.
Moody, Dr. Terrell
Martin, Dr. W. W.
Marbury, Dr. C. C.
Manganaro, Dr. R. N.
Maher, Dr. R. E.
McNamara, Dr. C. E.
McInerney, Dr. M. J.
McDonald, Dr. F. M.
McCarthy, Dr. S. A.
Neuman, Dr. Lester
O'Keefe, Dr. James A.
O'Donnell, Dr. P. J.
O'Donnell, Dr. W. F.
Putzki, Dr. Paul S.
Penhallow, Dr. D. P.
Reuter, Dr. F. A.
Raedy, Dr. J. R.
Sanderson, Dr. F. R.
Schreiber, Dr. F. C.
Shea, Dr. F. R.
Schreiber, Dr. H. R.
Shepherd, Dr. E. R.
Suraci, Dr. C. X.
Talbot, Dr. J. A.
Thompson, Dr. J. L., Sr.
Thompson, Dr. J. L., Jr.
Van Natta, Dr. P. C.
Virnstein, Dr. J. E.
Wilkinson, Dr. R. W.

Gov. Ex. 506

The Medical Society of the District of Columbia

Successor (1911) to the Medical Society of the District of Columbia, Founded September 26, 1817, and the Medical Association of the District of Columbia, Founded January 11, 1833.

1718 M Street, Washington

Office of Secretary-Treasurer

December 2, 1937.

Chief of Staff, Providence Hospital, 2nd and D Streets, S. E., Washington, D. C.

DEAR DOCTOR:

Pursuant to formal action of the Medical Society of the District of Columbia, in session on the evening of December 1, 1937, the attached resolution is sent you.

Very truly yours, C. B. Conklin, M.D., Secretary.

CBC/dw
Encl.

The Medical Society of the District of Columbia

1718 M Street

Washington

Resolution adopted by the Society, in session on the evening of December 1, 1937:

RESOLVED, That as a matter of educational policy the Medical Society of the District of Columbia strongly recommends that all hospitals engaged in the teaching and training of residents, interns, and nurses, where possible, follow the recommendation of the American Medical Association regarding the constitution of their entire Medical Staffs, namely, that each appointee be a member of the Medical Society of the District of Columbia or a local medical society in this immediate neighborhood and a member of the American Medical Association.

Gov. 507

Minutes of the Meeting of the Medical Board of Columbia Hospital at 11:30 A. M. April 14, 1938

The Medical Board met at the Hospital at 11:30 A. M. this date.

Present: Drs. Sprigg, Silvester, Mundell, Copeland, Ashburn and McNitt.

The minutes of the meetings of March 10th and March 30th were read and approved. The secretary reported the occupancy for March 70.8% on the Gynecological side with 136 operations, one death and one autopsy; 88.3% on the Obstetrical side, with 179 births, including 4 stillbirths. There were eight post-natal deaths, with seven autopsies.

The following applications for courtesy privileges in Class 3 were approved for recommendation to the Board of Directors:

Dr. Cecil L. Fusfeld, Dr. Russell Edmonston, Dr. Herbert S. Gates, Dr. Richard B. Castell, Dr. Robert H. Harmon, Dr. Andrew J. Betz, Dr. W. S. Blakiston.

The application of Dr. George W. Reeves for privileges in classes 1 & 2 was approved with the usual cautionary provise extended to all of our recent residents.

The application of Dr. A. Stephen Hulbert for privileges in class 3 was tabled.

The application of Dr. Morton A. Kaufman for privileges in classes 1 & 2 was held over pending receipt of advice from the Washington Gynecological Society.

The Committee on Staff Conference recommended for the next program the following cases:

Gyn. 81693—Dr. Kelley. Cholecystitis and cholelithiasis, cholecystectomy, appendectomy, left perinephritic abscess, stitch abscess, anemia. Recovery.

Ob. 82500—Dr. Warren. Premature rupture of membranes, prepartum hemorrhage—bag induction, puerpural fever—mastitis. Death of the infant.

Ob. 82097—Dr. Titus. Caesarean section—Fracture of right femur of infant.

The committee also recommended that Dr. Kilmer read a statistical analysis of the Obstetric work of the Hospital for the year 1937, and that Dr. Cajigas report concerning recent important pathological findings in newborn infants. The program was approved.

The secretary reported that Dr. Kelley desires to have Dr. James P. Kane and Dr. Edwin McNamara as assistants in the clinic.

It was suggested, moved and carried that Dr. Cajigas be made a member of the committee on Staff Conference program:

The meeting adjourned at 12:30 P. M.

Signed, P. M. Ashburn, M. D., Secretary Medical Board.

Gen. Ex 513

Columbia Hospital for Women

OBSTETRICS

Chief	Associate	Assistants
Dr. Sprigg	Dr. Haynes	Dr. Harris Dr. Loftus
Dr. Mundell	Dr. Cusack	Dr. King Dr. Warren
Dr. Silvester	Dr. Thomas	Dr. Cockerille Dr. Conley
Dr. Willson.	Dr. Preece	Dr. Holden Dr. Waters

GYNECOLOGY

Dr. Kelley Dr. Miller Dr. Crowley	Dr. Wynkoop Dr. McNitt Dr. Costello	Dr. Kushner Dr. Holden Dr. Morgan Dr. Hawken Dr. Lynch Dr. Brown
Dr. Titus	Dr. Hixson	Dr. Waters Dr. Warren

	Pediatrics	
Dr. Copeland	Dr. McLeod Dr. Schutz	Dr. Nachlas
	Anesthetists	
Dr. Lowe	Dr. Mann Dr. Bolton Dr. Sohon	Dr. Warren
	Pathologist	
Dr. Gajigas		
	Radiologist	
Dr. Moore	Dr. Abbe	Dr. McClatchie Assistant in Dermatology and Assistant in Syphilogy
	Obstetrics	
Dr. Mundell	Dr. Cusack	Dr. King Dr. Warren
Dr. Silvester	Dr. Thomas	Dr. G. Reeves Dr. Conley
Dr. Willson	Dr. Preece	Dr. Waters Dr. Holden
Dr. Sprigg	Dr. Haynes	Dr. Harris Dr. Loftus
	Gynecology	
Dr. Crowley	Dr. Costello	Dr. Lynch Dr. Brown Dr. Beard Dr. Hawken
Dr. Kelly	Dr. J. Wynkoop	Dr. C. Reeves Dr. J. Kane Dr. V. McNamara Dr. D. Kushner
Dr. McNitt	Dr. Cockerille	Dr. Holden Dr. Richwine
Dr. Titus	Dr. Hixson	Dr. Waters Dr. Warren Dr. C. Reeves
	Pediatrics	
Dr. Copeland	Dr. McLeod Dr. Schutz	
	Anesthetists	
Dr. Love	Dr. Mann Dr. Bolton Dr. Sohon	Dr. Warren
	Pathologist	
Dr. Cajigas		
	Radiologist	
Dr. Moore	Dr. Abbe	Dr. McClatchie Assistant in Dermatology and Assistant in Syphilogy.

Committees of Medical Staff During the Year 1937

Dr. J. J. Mundell, Dr. J. F. Crowley, to consider and make recommendation upon four applicants for Courtesy Staff privileges (1/26/37).

Dr. E. W. Titus, Dr. R. L. Silvester, to examine and make recommendation concerning the Courtesy Staff List before the next Medical Board Meeting (1/26/37).

Dr. R. L. Silvester, Dr. J. F. Crowley, Dr. T. F. Lowe, on Safety of Anesthesia.

Dr. E. W. Titus, Dr. J. J. Mundell, Col. P. M. Ashburn, Interne Committee.

Dr. E. W. Titus, Dr. R. L. Silvester, Col. P. M. Ashburn, to study the advisability of restricting or curtailing the Courtesy List (9/28/37).

Dr. E. W. Titus, Dr. Prentiss Willson, to draw up a resolution on Dr. G. Brown Miller's death.

Committees of Medical Staff During the Year 1938

Dr. J. F. Crowley, Dr. R. L. Silvester, Col. P. M. Ashburn, to consider application of Dr. Cox for Courtesy Staff privileges.

Dr. R. L. Silvester, Dr. H. J. Russell McNitt, Col. P. M. Ashburn, Interne Committee.

Dr. Edgar Copeland, Dr. Tomas Cajigas, Col. P. M. Ashburn, supervise control of and cooperate with Health Department in the matter of outbreak of diarrhea among infants.

Dr. J. F. Crowley, Dr. J. Thomas Kelley, Col. P. M. Ashburn, to review clinical charts.

Dr. Prentiss Willson, Dr. H. J. Russell McNitt, to take charge of one of the D. C. Medical Society Scientific programs.

Dr. Prentiss Willson, Col. P. M. Ashburn, Supt., to inspect the hospital periodically with the Superintendent.

Dr. E. W. Titus, Dr. H. J. Russell McNitt, to advise application blanks for residents' and courtesy staff privileges.

Consulting Staff

General Medicine	Surgery
Sterling Ruffin	Howard F. Strine
Edwin P. Behrend	Charles Stanley White
William B. Sims	Edmund Horgan
Roy D. Adams	Harry H. Kerr
	James A. Cabill
	Paul Putski

Pediatrics

Edgar Copeland
Harry Hampton Donnally

Urology

J. M. Fadeley
W. C. Sterling
R. M. LeComte
Wm. P. Herbst

Proctology

G. W. Ault

Dermatology

Henry H. Hazen
F. J. Eichenlaub

Ophthalmology

William T. Davis
Carl Henning

Otology & Laryngology

William B. Mason
J. C. Bradley
W. H. Jenkins

Orthopedic Surgery

John Allan Talbot
C. L. Hall
P. E. Larkin

Cardiology

J. A. Lyon
T. S. Lee

Plastic Surgery of the Newborn

Robert E. Moran

H. W. Lawson—Emeritus in Obstetrics
W. Sinclair Bowen— " " "
Louise Taylor-Jones— " " Pediatrics
Emma Irving O.— " " Orthopedic Surgery

Gov. Ex. 514

The Medical Society of the District of Columbia

1718 M Street, N. W.

Washington

July 29, 1937.

TO THE SUPERINTENDENT:

Pursuant to action of the Executive Committee, held on the evening of July 12, 1937, and in fulfilment of Chapter IX, Article IV, Section 5 of the Constitution, your attention is hereby called to the list of organizations, groups and individuals herewith enclosed. The approved list is on file with the Secretary's Office. The amendment is now in force. Any violation thereof will make a number liable according to the provisions of the Constitution:

Chapter IX, Article IV, Sec. 5:

"No member of the Society shall engage in any professional capacity whatsoever with any organization, group or individual, by whatever name called or however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, which has not been approved by the Society.

"The Executive Committee is authorized and directed to prepare an approved list of organizations, groups and individuals, by whatever name called and however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, and the same shall be kept in the office of the Secretary-Treasurer. Before any such organization, group or individual can be placed on the approved list of the Society, such organization, group or individual, or the member of the Society proposing professional relations therewith, shall submit to the Compensation, Contract and Industrial Medicine Committee such evidence as the Committee or the Society may require showing the character, activities, financial condition and ethical standards of said organization, group or individual, and after considering the same, said committee shall make a report of its investigation and findings to the Executive Committee for such action as it may deem necessary."

Very truly yours, C. B. Conklin, M. D., Secretary.

The Medical Society of the District of Columbia

1718 M Street

(Telephone: District 3111)

Approved List of Organizations, Groups and Individuals, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof. (Chapter IX, Article IV, Section 5 of the Constitution.)

1. All members of the Medical Society of the District of Columbia.

2. Medical staffs of all hospitals, institutions and clinics, each member of which has been approved by the Medical Society of the District of Columbia.

3. The United States Government Medical Personnel on duty in the District of Columbia, or within 10 miles thereof, i.e., the United States Army, Navy, Public Health Service, and the Veterans' Administration.

4. The Health Officer and attached medical personnel.
5. Membership of the District of Columbia Dental Society.
6. Membership of the Homeopathic Medical Society.
7. Members of the Montgomery County (Md.), Prince Georges County (Md), Fairfax County (Va.), and Arlington County (Va.) Medical Societies, who reside within 10 miles of the District of Columbia.
8. Members of the Alexandria Medical Society.
9. The following Compensation Clinics:

	Operated by
Farragut Medical Clinic	Frank E. Gantz, M.D.
First Aid Station	Arch L. Riddick, M.D.
Harry M. Lewis Clinic	Harry M. Lewis, M.D.
Market Compensation Accident Clinic	H. J. Kossow, M.D.
Northeast Insurance Clinic	G. Henry Rawson, M.D.
Union Market Workmen's Compensation Clinic	Maxwell Hurston, M.D.
Washington Industrial Accident Clinic	Edward Clark Morse, M. D.
Washington Medical Building Workmen's Clinic	Charles S. White, M. D.

10. All medical personnel employed by the Federal or Municipal Governments within the District of Columbia or within 10 miles thereof.
11. Membership of the Medico-Chirurgical Society (colored Medical Society).
12. Membership of the Robert T. Freeman Dental Society (colored Dental Society).

Gov. Ex. 515

The Medical Society of the District of Columbia

Successor (1911) to the Medical Society of the District of Columbia, Founded September 26, 1817, and the Medical Association of the District of Columbia, Founded January 11, 1833.

1718 M Street
Washington
Office of Secretary-Treasurer

December 2, 1937.

Chief of Staff, Columbia Hospital, 25th and L Streets, N. W., Washington, D. C.

Dear Doctor:

Pursuant to formal action of the Medical Society of the District of Columbia, in session on the evening of December 1, 1937, the attached resolution is sent you.

Very truly yours, C. B. Conklin, M.D., Secretary.

CBC/dw
Encl.

Gov. Ex. 518

Meeting of the Executive Committee
On Hospital Administration

(Except)

Dr. Coe read the following names of men approved for hospital practice:

Dr. H. A. Wood, major and minor surgery.

Dr. Allan E. Lee, medicine, minor surgery, normal obstetrics.

Dr. Wendell P. Blake, medicine, major and minor surgery.

Dr. Stewart M. Grayson, major and minor surgery, obstetrics and gynecology.

Dr. Merton E. Twogood, medicine, minor surgery.

Dr. Philip A. Degnan, medicine and normal obstetrics.

Dr. Carson Lee Fifer, major and minor surgery and gynecology.

Dr. Edward A. Cafritz, major and minor surgery and gynecology.

Dr. John G. Ball, medicine and normal obstetrics.

Dr. Henry L. Bastien, medicine, minor surgery and normal obstetrics

Dr. E. G. Bauersfeld, medicine, minor surgery and normal obstetrics.

Dr. Margaret Nicholson, medical pediatrics.

Dr. John H. Lyons, major surgery and minor surgery.

Dr. George W. Creswell, medicine.

Dr. John J. Lynch, major and minor surgery, obstetrics and gynecology.

Dr. Charles P. Ryland, medicine, minor surgery, normal obstetrics.

Dr. Virginia E. Lane, obstetrics.

Dr. M. T. Rosser, medicine and normal obstetrics.

Dr. Ernest J. Parent, medicine, minor surgery, normal obstetrics and non-operative gynecology.

Dr. Floyd S. Rogers, gynecology and obstetrics.

Dr. Coe read a letter from Dr. Howe in which he was reapplying for hospital privileges. Action on letter not taken.

Dr. Hickling spoke in favor of Dr. Howe but said he would be guided by committee action.

Sister Rodriquez said that Dr. Hulbert has a patient in an obstetrical ward which was admitted as emergency. Would like some ruling on such cases.

Dr. Wall said that Children's Hospital has adopted the following report in regard to such cases. This copy was given to Sister Rodriquez.

Dr. Stanton moved that we adopt this report of Children's Hospital pertaining to emergency case of Group Health Association, Inc.

Father McCauley read a letter from Dr. Rhuland concerning appointments at Gallinger Hospital and in which certain heads of departments were asked to meet in Dr. Rhuland's office for consideration of applicants.

There being no further business motion made to adjourn at 1:45 P. M.

Signed: V. J. Dardinski, M. D., Secretary.

Gov. Ex. 519

General Staff

Abernathy, T. J.
Angevine, K. Walter
Abramson, Herbert
Alexander, S. A.
Alfaro, Victor.
Argy, W. P.
Aronstein, Charles G.
Atkinson, Walter
Aschebach, E. H.
Ault, G. W.
Avery, F. Scott
Baker, Wyrth P.
Ballinger, W. M.
Barr, Wm. C.
Battles, S. L.
Beard, Wm. H.
Becker, Maurice Joseph
Behrend, E. B.
Belt, Norvell
Benjamin, S.
Berenstein, Stanley
Bauersfeld, G. E.
Betz, Andrew T.
Briggs, C. D.
Bier, R. A.
Biggs, J. R.
Bowen, W. S.
Bastien, L. Henry
Bradley, Thomas
Ball, G. John
Breeding, E. H.
Blake, P. Wendell
Brue, P. Peter
Burbank, Caryl
Cahill, A. J.
Cake, P. Chas.
Canada, C. Charles
Casady, J. Warren
Conlon, J. R.
Caulfield, A. P.
Conley, J. Leonard
Colvin, L. H.
Collins, F. Thomas
Collins, J. Lloyd
Claude, L. H.
Coe, Fred
Clark, Earl Wm.
Chase, W. S.

Chickering, E. E.
Cavanagh, John R.
Chapman, Katherine
Chase, Morris
Cate, L. Huntley
Cummings, J. E.
Cusack, J. Wm.
Crowley, F. J.
Cox, C. O.
Cromer, J. K.
Courtney, X. F.
Cousins, C. S.
Cooper, Linn
Costello, R. James
Constantinople, S. P.
Creswell, W. George
Cafritz, A. Edward
Corley, C. Karl
Detwiler, Robert
DeButts, Richard
Delaney, D. Martin
Davis, J. H.
Dean, F. B.
Darner, L. H.
Damian, Julian
Davis, Daniel
Davies, F. Harry
Duehring, E. Frank
Dunn, A. A. E.
Donn, Y. F.
Donovan, I. Leo
Dessoff, Joseph
Dessoff, Samuel
DeVito, Michael
Dewey, George
Dodek, Samuel
Donahue, E. M.
Dolan, V. John
Davis, W. Edgar
Degnan, A. Philip
Earley, H. James
Eichenlaub, Frank
Ellis, George
Engh, O. Anderson
Esler, W. James
Fadeley, M. James
Ferguson, A. C.
Feldman, Irving
Fields, J. Russell
Fierst, E. Charles
Fischer, B. M.
Fischer, Aubrey
Fishback, C. Fred
Fletcher, M. Harry
Friedenberg, Harry
Fulcher, H. O.
Fifer, Lee Carson
Gaffney, L.
Grayson, M. Stewart
Gable, R. G.
Gannon, A. J.
Gillen, H. James
Gilligan, H. John
Golden, Benjamin
Gorman, A. Edward
Greenberg, Milton
Greaney, F. Wm.
Gwynn, B. Henry
Gwynn, C. Wm.
Halley, R. C.
Hall, L. Custis
Hammett, M. Charles
Hannon, P. Francis
Hantman, Irvin
Harnsberger, W. C.
Hawfield, James
Hawkin, S. W.
Hazel, T. Jon
Hazen, H. H.
Herbst, P. W.
Hess, M. V.
Higgins, E. W.
Hildebrand, Emil
Hilton, J. F.
Holden, T. Raymond
Hollister, Wm.
Horgan, Edmund
Horgan, Joseph

Howard, W. S.
Horvat, S. F.
Huff, O. W.
Hussey, H. H.
Hungerford, B. Vincent
Hollingsworth, K. R.
Howe, M. Julian
Hulburt, Stephen
Iden, H. John
Jacobs, Bay J.
Jarman, D. W.
Jordan, D. J.
Johnson, Don
Katzman, Howard
Keane, J. Martin
Kelley, J. T.
Kerr, H. H.
King, E. Allen
Kirchner, C. Raymond
Knowlton, F. Don
Kramer, E. S.
Krechting, H. E. W.
Krick, J. Jerome
Kushner, H. David
Kane, F. Howard
Kelley, J. Clarence
Lane, E. Virginia
Lally, A. Charles
Lachman, E. Sander
Lally, J. Wm.
Lambert, C. W.
Lawson, W. H.
LeComte, M. Ralph
Leonardo, Alexander
Levine, Isadore
Lewis, G. Jose
Linthicum, A. W.
Litvin, Philip
Loftus, M. J.
Love, W. J.
Lowe, F. Thomas
Lyddane, E. Stuart
Lee, E. Allan
Leonard, W. B.
Laughlin, Kenneth
Lynch, John J.
Lyons, H. John
McHale, J. J.
McInerney, J. Michael
McIntyre, R. J.
McLarney, P. E.
McNamara, G. Edwin
McNulty, R. J.
McNutt, Agnes
MacClatchie, L. Keith
McDonald, N. Francis
McChesney, M. F.
Marbury, C. C.
Marbury, B. W.
Markwood, H. E.
Martel, Leon A.
Martinez, A. F.
Mason, M. Lyle
Mattare, J. J.
Mead, V. S.
Miller, Beveridge
Mitchell, W. C.
Moore, Cabell W.
Morgan, Wm. A.
Morgan, Wm. Gerry
Morris, R. Wm.
Morse, E. E.
Moser, M. J.
Moulden, R. W.
Mundell, J. J.
Myers, K. Walter
Manganaro, N. R.
Maher, E. Robert
Murphy, Wm. S.
Mann, W. John
Nolan, E. James
Notes, Bernard
Newman, Sigmund
Nicholson, Margaret
Neill, G. T.
Neviaser, S. J.
Nealon, W. S.
Norris, B. L.

Nutting, K. G.
O'Bryan, J. Francis
O'Donnell James F.
O'Donnell, Paul
O'Donnell, Roger
O'Donnell, F. W.
Omohundro, P. Miles
Pagan, E. A.
Payne, Edward J.
Palmer, M. A.
Parker, Howard
Pincock, Glen
Preece, A.
Price, Weldon
Purse, G. Grace
Putzki, Paul
Parent, J. Ernest
Quill, Thomas
Reed, John A.
Reeves, P. Clyde
Read, R. Boyd
Reeves, P. W.
Reuter, Fred
Richtmeyer, C. Duane
Rodis, Isadore
Rogers, F. J.
Roman, O. F.
Rosenberg, Richard N.
Rusmiselle, T. L.
Ryland, Charles
Rogers, S. Floyd
Rosser, T. M.
Ryland, P. Charles
Saffold, S. Guy
Sager, W. W.
Salan, J. Lacy
Sandler, Lewis I.
Sanderson, Fred
Scheele, A.
Schreiber, Fred
Schultz, Bernard
Shearer, R. J.
Sharpe, T. F.
Shaw, F. Richard
Shepherd, R. E.
Shull, C. E.
Smith, L. H.
Snowden, E.
Sprigg, Wm. M.
Stanton, Wm. J.
Stirling, W. C.
Strine, H. F.
Strine, H. H.
Sutton, N. R.
Sylvester, Richard
Thredgill, Francis D.
Taylor, Paul
Trible, G. B.
Trinder, H. J.
Thompson, J. Lawn, Jr.
Twogood, E. Merton.
VanKinsberger, M.
Verjes, Stephen
Virnstein, J. E.
Wall, S. J.
Warfield, J. Ogle
Warring, S. E.
Warner, W. J.
Warren, Francis J.
Welburn, C. W.
Weller, G. Louis
Wells, L. R.
White, Charles S.
Willcutts, M. D.
Wooldridge, Wm. N.
Wynkoop, J. D.
Wissler, E. J.
Wood, A. H.
Welch, Hugh
Young, J. Rogers
Yater, Wallace M.
Zehner, Harry
Ziegler, E. Edwin
O'Keefe, J. A.
Musso, Chas. M.
Barger, G. J. P.
Wilner, Paul R.
Dunne, Francis W.

Coffey, Robert J.
April, Ellis
Penhallow, Dunlap
Dortzback, Karl
Sullivan, Richard F.
Bateman, Joseph J.
Williams, Frasier
King, C. P.
Carter, Hill
Manchester, Benjamin
Ready, Thomas J.
Monks, Thomas R.
McGriff, J. R.
Dominick, John Frank
Kincheloe, Chas. F.

Gov. Ex. 520

Executive Staff

1938-1939

Reverend David V. McCauley
George Tully Vaughan
James A. Cahill, Jr.
Fred O. Coe
Reginald A. Cutting
Vincent J. Dardinski
D. Percy Hickling
Theodore Koppanyi
John D. Hird
Leon A. Martel
Mario Mollari
Joseph J. Mundell
Joseph S. Wall
Eugene R. Whitmore
Wallace M. Yater
Sister Superior Rodriguez
Henry S. Milone
William J. Stanton
John R. Cavanagh
Othmar Solnitsky
R. M. LeComte
John W. Warner

Credentials Committee

Sister Rodriguez
Dr. Leon A. Martel
Dr. Wallace M. Yater
Dr. James A. Cahill, Jr.
Dr. Joseph J. Mundell
Dr. V. J. Dardinski
Dr. Fred Coe

Gov. Ex. 524

The Children's Hospital

13th and W Streets, N. W.

Washington, D. C.

April 1, 1938.

MEMORANDUM

Children seeking admission to the hospital because of the emergency nature of their illness will be admitted upon the authority of the Chief or Assistant Resident Physician.

If such children present surgical conditions requiring immediate operation and are under the professional care of surgeons not members of the hospital or courtesy staff, such surgeons may be permitted to operate if assisted during the operation by the Chief or Assistant Resident Physician.

In every case of emergency nature thus admitted, the attending surgeon, or physician in case of medical illness, if not a member of the hospital or courtesy staff, must sign a statement setting forth the emergent necessity for the admission of the patient and for the immediate operation, if operation be required.

The above ruling is made in conformity with the intent and purpose of General Rule #7 of the By-laws and Rules of the Children's Hospital which states: "Emergency cases take precedence over all others and over all rules and first aid is to be immediately rendered by the House Officer most available".

Joseph S. Wall, M.D., Chairman Medical Staff.

. . . . . .

Form of statement referred to in Paragraph 3 in the memorandum above.

I hereby certify that Konrad Hooker is in need of immediate admission to the Children's Hospital, for emergency treatment.

(Signed) M. Scandiffio, M.D.

Date: 10-18-38.

Gov. Ex. 525

The Children's Hospital

Consulting Staff

Dr. William K. Butler
Dr. Francis R. Hagner
Dr. Thomas Lee
Dr. Frank Leech
Dr. William Beverly Mason
Dr. James M. Moser
Dr. Luther H. Reichelderfer

Attending Staff

Medical

Dr. Edgar P. Copeland
Dr. Charles B. Crawford
Dr. Hugh J. Davis
Dr. Harry Donnally
Dr. Preston A. McLendon
Dr. J. H. McLeod
Dr. Harry A. Ong
Dr. Joseph S. Wall
Dr. Edward Lewis
Dr. Charles Schutz
Dr. Edward Broocks
Dr. Montgomery Blair, Jr.
Dr. Kirby Smith
Dr. H. Lynn Colvin
Dr. Kirby Smith
Dr. Aaron Nimetz
Dr. Harry A. Spigel
Dr. Coursen B. Conklin
Dr. Marie V. Scandiffio
Dr. Everett M. Ellison

Surgical

Dr. H. H. Kerr
Dr. Daniel L. Borden
Dr. Edmund Horgan
Dr. Herbert Schoenfeld
Dr. J. Ogle Warfield
Dr. W. W. Sager
Dr. B. F. Dean
Dr. Wm. Marbury
Dr. Joseph Horgan
Dr. Frederick Fishback

Orthopedic

Dr. John Allan Talbot
Dr. Custis Lee Hall
Dr. Paul O'Donnell
Dr. G. W. Leadbetter
Dr. John E. McLain

Gynecology

Dr. E. W. Titus
Dr. Bernard Notes
Dr. David Kushner

Syphilology

Dr. F. H. Mistretta	Dr. E. Kirby Smith
	Dr. Elizabeth Chickering

X-ray

Dr. Fred O. Coe	Dr. Lawrence Otell
	Dr. Isadore Lattman

Ear, Nose and Throat

Dr. Daniel B. Moffett	Dr. S. A. Alexander
	Dr. Edward O'Brien
	Dr. Don Johnson
	Dr. Richard W. Wilkinson
	Dr. Harry Davies
Dr. Boyce Bolton	Dr. Joseph Kemp
	Dr. Charles W. Tegge
	Dr. Aubrey D. Fischer
Dr. Wm. H. Jenkins	Dr. Arthur N. Meloy
	Dr. Edward J. Cummings
	Dr. H. King Vann
Dr. Wm. Sparks	Dr. Allan Walker
	Dr. Ella Enlows

Dermatology

Dr. C. Augustus Simpson
Dr. Harry F. Anderson

Cardiology

Dr. James Alexander Lyon Dr. Margaret Nicholson

Dental

Dr. J. Robert De Farges Dr. Ralph Barnhard

Neurological

Dr. D. D. V. Stuart

Psychiatry

Dr. Loren B. T. Johnson Dr. Paul Ewerhardt

Urology

Dr. Charles P. Howze
Dr. Thomas C. Thompson

Anesthesia

Dr. J. T. Mann
Dr. Edward Macon
Dr. Robert Bolton

Pathology

Dr. J. W. Lindsay
Dr. Clarence Rice
Dr. Maurice Selinger

Eye

Dr. Louis Greene
Dr. James M. Greear
Dr. Victor Simpson
Dr. Le Roy Hyde
Dr. Michael Kennedy
Dr. Frank Costenbader

Gov. Ex. 526

The Medical Staff of the Children's Hospital of the D. C.
1938

Chairman—Dr. Joseph S. Wall
Vice-chairman—Dr. Edgar P. Copeland
Secretary—Dr. Harry A. Ong

Consulting Staff

Dr. Daniel L. Borden
Dr. Charles B. Crawford
Dr. Francis R. Hagner
Dr. H. H. Kerr
Dr. Thomas S. Lee
Dr. Frank Leech
Dr. William Beverley Mason
Dr. James M. Moser
Dr. Luther H. Reichelderfer

Attending Staff
Department of Medicine

Dr. Edward B. Broocks
Dr. Edgar P. Copeland
Dr. Hugh J. Davis
Dr. Harry H. Donnally

Associate Staff

Dr. Montgomery Blair, Jr.
Dr. Weldon A. Price
Dr. Charles A. Schutz
Dr. H. Lynn Colvin
Dr. Joseph J. Greenlaw
Dr. Elizabeth Chickering
Dr. William S. Anderson

Allergy Service

Dr. Harry F. Dowling
Dr. Benjamin Lafsky
Dr. G. Haven Mankin,
E. N. T.

Dr. Preston A. McLendon	Dr. E. Kirby Smith
	Dr. Aaron Nimetz
Dr. J. H. McLeod	Dr. Harry A. Spigel
	Dr. Robert Detwiler
Dr. Harry A. Ong	Dr. Coursen B. Conklin
	Dr. Robert A. Bier
Dr. Joseph S. Wall	Dr. Charles A. Millwater
	Dr. William F. Burdick

Director of Out-Patient Department

Dr. Edward Lewis	Dr. Everett M. Ellison
	Dr. William G. Meiman

Department of Surgery

Dr. Edmund Horgan	Dr. Joseph Horgan
	Dr. Frederick C. Fishback
Dr. John H. Lyons	Dr. W. W. Sager
Dr. H. H. Schoenfeld	Dr. Thomas Bradley
	Dr. William B. Marbury
Dr. J. O. Warfield	Dr. B. F. Dean

Department of Plastic Surgery

Dr. Robert E. Moran	Dr. M. P. De Vito

Department of Orthopedic Surgery

Dr. Custis Lee Hall	Dr. John McLain
	Dr. Frank M. Hand
	Dr. O. Anderson Engh
Dr. John Allan Talbot	Dr. Paul O'Donnell
	Dr. G. W. Leadbetter

Department of Pathology

Dr. J. W. Lindsay	Dr. Maurice A. Selinger
Dr. E. Clarence Rice	

Department of Roentgenology

Dr. Fred O. Coe	Dr. R. R. Rathbone
	Dr. J. E. Wissler

Department of Dermatology

Dr. Harry F. Anderson	Dr. L. Keith McClatchie
	Dr. Russell J. Fields
Dr. C. Augustus Simpson	Dr. Francis Ellis

Department of Gynecology

Dr. E. W. Titus	Dr. David Kushner
	Dr. William Beard

Department of Laryngology, Otology and Rhinology

Dr. S. A. Alexander	Dr. Robert J. Kemp
	Dr. Charles W. Tegge
	Dr. Fordyce Johnson
Dr. William H. Jenkins	Dr. H. King Vann
	Dr. Allan E. Walker, Jr.
Dr. Daniel B. Moffett	Dr. Edward M. O'Brien
	Dr. Don Johnson
	Dr. Richard W. Wilkinson
	Dr. G. Haven Mankin
Dr. Le Roy Sawyer	Junior Associates
	Dr. Frederic Moretti
	Dr. Irvin Feldman
	Associates
	Dr. Ella Enlows
	Dr. Aubrey Fischer

Department of Ophthalmology

Dr. Louis S. Greene	Dr. James N. Greear
	Dr. G. Victor Simpson
Dr. Le Roy Hyde	Dr. Frank Costenbader
	Dr. Joseph Dessoff

Department of Syphilology

Dr. F. H. Mistretta	Dr. Elizabeth Chickering
	Dr. Herman Eisenberg

Department of Anesthesia

Dr. J. T. Mann	Dr. Edward B. Macon
	Dr. Robert M. Bolton

Cardio Vascular Service

Dr. James Alexander Lyon

Dr. Frank Horvath
Dr. Margaret M. Nicholson
Dr. Mark P. Schultz,
nominated 3-1-37

Genito Urinary Service

Dr. Charles P. Howze

Dr. Norvell Belt
Dr. W. Dabney Jarman

Dr. Thomas C. Thompson

Dr. Homer G. Fuller

Dental Service

Dr. J. Robert De Farges

Dr. Walter A. Rath

Neurological Service

Dr. D. D. V. Stuart

Dr. Philip Litvin

Dr. J. Duerson Stout
Nominated and approved by Staff 10-3-38

Psychiatric Service

Dr. Loren B. T. Johnson

Dr. Roger S. Cohen
Dr. Sander E. Lachman

Junior Associate
Dr. Isadore Rodis

Sept. 1938

Out-patient Department Staff

Dr. Arthur Lewis
Dr. Ralph Cohen
Dr. Milton Greenburg
Dr. Sigmund Neuman—Vienna, Va.
Dr. Stephen Verges
Dr. David Weinstein
Dr. Arthur Nachlas
Dr. Grace Purse
Dr. William Raffel
Dr. John Hanby
Dr. James Jackson
Dr. Frank S. Horvath

Dr. Mark P. Schultz
Dr. G. Louis Weller
Dr. Benjamin Manchester
Dr. Irvin Hantman
Dr. J. R. McGriff
Dr. Reuben Goodman
Dr. Caroline S. Pincock
Dr. Thomas Egan
Dr. Connor Moss
Dr. Cecile Fusfeld
Dr. Irvin Feldman.
Dr. Frederick Morretti
Dr. F. Maury
Dr. Stanley Bernstein
Dr. Perry W. Gard
Dr. Snader E. Lachman
Dr. William R. Casady (D.D.S.)
Dr. Montague A. Cashman (D.D.S.)
Harry S. Sembikos, D.D.S.
Jos. B. Schertz, D.D.S.

Gov. Ex. 527

The Medical Society of the District of Columbia

1718 M Street, N. W.

Washington, D. C.

July 29, 1937.

TO THE SUPERINTENDENT:

Pursuant to action of the Executive Committee, held on the evening of July 12, 1937, and in fulfilment of Chapter IX, Article IV, Section 5 of the Constitution, your attention is hereby called to the list of organizations, groups and individuals herewith enclosed. The approved list is on file with the Secretary's Office. The amendment is now in force. Any violation thereof will make a member liable according to the provisions of the Constitution:

Chapter LX, Article IV, Sec. 5:

"No member of the Society shall engage in any professional capacity whatsoever with any organization, group or individual, by whatever name called or however organ-

ized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, which has not been approved by the Society.

"The Executive Committee is authorized and directed to prepare an approved list of organizations, groups and individuals, by whatever name called and however organized engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, and the same shall be kept in the office of the Secretary-Treasurer. Before any such organization, group or individual can be placed on the approved list of the Society, such organization, group or individual, or the member of the Society proposing professional relations therewith, shall submit to the Compensation, Contract and Industrial Medicine Committee such evidence as the Committee or the Society may require showing the character, activities, financial condition and ethical standards of said organization, group or individual, and after considering the same, said committee shall make a report of its investigation and findings to the Executive Committee for such action as may deem necessary."

Very truly yours, (Signed) C. B. Conklin, M. D., Secretary.

The Medical Society of the District of Columbia

1718 M Street

(Telephone: District 3111)

Approved List of Organizations, Groups and Individuals, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof. (Chapter IX, Article IV, Section 5 of the Constitution.)

1. All members of the Medical Society of the District of Columbia.

2. Medical staffs of all hospitals, institutions and clinics, each member of which has been approved by the Medical Society of the District of Columbia.

3. The United States Government Medical Personnel on duty in the District of Columbia, or within 10 miles thereof, i.e., the United States Army, Navy, Public Health Service, and the Veterans' administration.

4. The Health Officer and attached medical personnel.

5. Membership of the District of Columbia Dental Society.
6. Membership of the Homeopathic Medical Society.
7. Members of the County of Montgomery (Md.), Prince Georges County (Md.), Fairfax County (Va.), and Arlington County (Va.) Medical Societies, who reside within 10 miles of the District of Columbia.
8. Members of the Alexandria Medical Society.
9. The following Compensation Clinics:

Farragut Medical Clinic, operated by Frank E. Gantz, M. D.

First Aid Station, Arch L. Riddick, M. D.

Harry M. Lewis Clinic, Harry M. Lewis, M. D.

Market Compensation Accident Clinic, M. J. Kossow, M. D.

Northeast Insurance Clinic, G. Henry Rawson, M. D.

Union Market Workmen's Compensation Clinic, Maxwell Hurston, M. D.

Washington Industrial Accident Clinic, Edward Clark Morse, M. D.

Washington Medical Building Workman's Clinic, Charles S. White, M. D.

10. All medical personnel employed by the Federal or Municipal Governments within the District of Columbia or within 10 miles thereof.
11. Membership of the Medico-Chirurgical Society (colored Medical Society).
12. Membership of the Robert T. Freeman Dental Society (colored Dental Society).

Gov. Ex. 529

The Medical Society of the District of Columbia

1718 M Street, N. W.

Washington

July 29, 1937.

DEAR DOCTOR:

Pursuant to action of the Executive Committee, held on the evening of July 12, 1937, and in fulfilment of Chapter IX, Article IV, Section 5 of the Constitution, your attention is hereby called to the list of organizations, groups and

individuals herewith enclosed. The approved list is on file with the Secretary's Office. The amendment is now in force. Any violaton thereof will make a member liable according to the provisions of the Constitution:

Chapter IX, Article IV, Sec. 5:

"No member of the Society shall engage in any professional capacity whatsoever with any organization, group or individual, by whatever name called or however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, which has not been approved by the Society.

"The Executive Committee is authorized and directed to prepare an approved list of organizations, groups and individuals, by whatever name called and however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, and the same shall be kept in the office of the Secretary-Treasurer. Before any such organization, group or individual can be placed on the approved list of the Society, such organization, group or individual, or the member of the Society proposing professional relations therewith, shall submit to the Compensation, Contract and Industrial Medicine Committee such evidence as the Committee or the Society may require showing the character, activities, financial condition and ethical standards of said organization, group or individual, and after considering the same, said committee shall make a report of its investigation and findings to the Executive Committee for such action as it may deem necessary."

Very truly yours, C. B. Conklin, M. D., Secretary.

Gov. Ex. 557

A. T. Talley, M.D., F.A.C.S.

1307 Medical Arts Bldg.

Fairfax 1355

Houston, Texas

January 26, 1938.

Mr. President and Members of the Society:

The January meeting of the Board of Censors was held January 24, 1938.

We had before us three applications for membership in the society. Only two were approved. The other one we are holding over for further investigation.

We also received during the month a communication from two of our members appealing to the Board of Censors for relief of a judgment from the adjudication committee. After due consideration we answered this communication by the following letter. (Read letter, also read By-Law)

It has come to our attention that one of our members has joined the staff of a Group Health Association located in Washington, D. C. I wrote Dr. Conklin, Secretary of the District of Columbia Medical Society in reference to the ethical standing of this association and its staff. Here is his answer. (Read letter) It seems to me that this is a similar organization to our Hughes Tool Company's Welfare organization and other organizations we have with us at the time. If my interpretation of the code of ethics of the American Medical Association is correct, all such organizations are unethical. I think we should give this question more serious investigation and report at a later date.

We have sample copies from the American Medical Association of two booklets on Medical ethics and the Board of Censors would like to have permission from the society to buy 500 copies of one or both of these books so that we can give them to each of our members.

Respectfully submitted, Board of Censors, Harris County Medical Society.

Gov. Ex. 559

Dr. A. T. Talley

1307 Medical Arts Bldg.

Fairfax 1355

Houston, Texas

3—30—38

Mr. President and Members of the Society:

The Board of Censors met today and we had before us, one application for membership in the Society—Dr. Hale—this application was passed on favorably.

It is also our unpleasant duty to prefer charges against one of the members of this Society.

A. T. Talley, Chairman, Board of Censors.

Gov. Ex. 561

Minutes Harris County Medical Society

Business meeting, September 14, 1938:

Meeting called to order at 8:00 P. M. by the President, Dr. John T. Moore. Seventy-four members present.

Minutes of previous business meeting read and approved.

Unfinished business:

The Secretary read a resolution adopted in 1934 regarding the use of the classified section of the Telephone Directory.

The Secretary read the decision of the Judicial Council of the American Medical Association regarding the Raymond E. Selders contract. Discussion by Dr. Talley, Dr. Cody, Dr. John T. Moore, Dr. J. E. Clarke, Dr. S. C. Red, Dr. J. C. Alexander and Dr. Carl Wilson.

Motion by Dr. Talley that the matter of Dr. R. E. Selders' trial be laid on the table until a later date and taken up at such time as deemed best by the Board of Censors. Seconded and carried.

Reports of committees:

The Treasurer's report was read by the Secretary, copy of which is attached to these minutes.

Dr. S. C. Red moved that the report be received and filed. Dr. Moore ruled the report received.

Dr. M. D. Levy suggested that the methods of securing money for the carrying on of the Society's business be considered at this meeting and suggested three ways in which this might be done: (1) The money might be borrowed from the Bureau, (2) it might be borrowed from the Houston Academy of Medicine, (3) an assessment might be made.

Motion by Dr. Levy that the needed funds be borrowed from the Medical and Dental Service Bureau. Motion died for want of a second.

Motion by Dr. E. L. Goar that the President and Secretary attempt to make a loan from the Medical and Dental

Service Bureau and failing, that they attempt to make it from the Houston Academy of Medicine. Seconded.

Dr. Cody made a substitute motion that an assessment of one dollar ($1.00) per member be levied, due and payable on the first day of October to take care of this deficit and in the meantime, the officers be empowered to make a loan.

Gov. Ex. 562

Minutes Harris County Medical Society

Business Meeting, October 26, 1938:

Meeting called to order at 8:00 P. M. by the President, Dr. John T. Moore. Seventy members present.

Minutes of previous business meeting read and approved.

Unfinished Business:

Dr. A. T. Talley reported for the Board of Censors two matters concerning the placing of names of applicants for membership in the Society on the program card, and the status of the membership of Dr. Raymond E. Selders.

Motion by Dr. Hodges that names of applicants, that had been read at the previous business meeting and had passed the Board of Censors, be placed upon the program card prior to the business meeting at which time voting upon such applicants was to take place. Seconded and duly carried.

Motion by Dr. A. T. Talley, seconded by Dr. Toland, that the indictment against Dr. Raymond E. Selders, now lying on the table, be brought before the Society and dismissed and notification of the Society's action be sent to him by the Secretary.

Discussion by Dr. J. C. Alexander.

Amendment offered and accepted by Dr. Talley and Dr. Toland, as follows:

That the indictment against Dr. Raymond E. Selders, now lying on the table, be brought before the Society and dismissed due to the fact that the Society lacked jurisdiction, since he was not a member, and that notification of the Society's action be sent to him by the Secretary.

Substitute motion by Dr. C. C. Cody that the Society request the Board of Censors and Counsel for the accused to

agree upon statement of facts and if not agreed upon that they report the disagreement at the next business meeting.

This motion was withdrawn by Dr. Cody.

Substitute motion by Dr. J. C. Alexander, seconded by Dr. Cody and duly carried, that the Society postpone the action until the next business meeting.

Motion made by Dr. Toland, seconded by Dr. Petersen, that the proposed assessment of one dollar ($1.00) per member be levied, due and payable on the first day of October, to take care of the deficit of the Society and in the meantime, that the officers be empowered to make a loan. Motion lost.

Gov. Ex. 565

Harris County Medical Society

John T. Moore, M. D., President; Alvis E. Greer, M. D., Vice-President; Walter A. Coole, M. D., Secretary; Wm. A. Toland, M. D., Treasurer. Phone Preston 2201. Medical Arts Building, Houston, Texas.

November 22, 1938.

Mr. President, and Members of The Harris County Medical Society:

The Board of Censors, Drs. A. T. Talley, John H. Foster, and Clyde M. Warner, met with your President, Dr. John T. Moore, the Secretary, Dr. Walter A. Coole, the District Counsel, Dr. Judson T. Taylor, and the legal representative of Dr. Raymond E. Selders, Dr. J. C. Alexander, November 21st, 1938.

The meeting was called to order and a very free and frank discussion was held regarding the Dr. Raymond E. Selders matter, which has been pending in our Society for some time.

The conclusion reached by the Board of Censors was agreed to by all those present, that due to the various legal questions involved in the case, the Board of Censors recommends to the Society:

First: That the charges of unethical practice against Dr. Raymond E. Selders, now lying on the table, be brought before the Society and dismissed without prejudice.

Action by the Society

Second: That the check of $24.00, tendered the Society by Dr. Raymond E. Selders, to pay his 1938 dues, be accepted.

Then transfer card application.

Respectfully submitted by The Board of Censors of the Harris County Medical Society, A. T. Talley, John H. Foster, Clyde M. Warner.

ATT:BB

Gov. Ex. 566

American Medical Association

Olin West, M. D., Secretary and General Manager

535 North Dearborn Street, Chicago,

May 5, 1938.

Dr. Walter A. Coole, Secretary, Harris County Medical Society, 818 Hathaway Street, Houston, Texas

DEAR DOCTOR COOLE:

I have before me a carbon copy of your communication addressed to the Judicial Council of the American Medical Association under date of May 1, which will be referred at once to the Chairman of the Judicial Council.

I infer from a letter which I have received from Doctor Follansbee, Chairman of the Judicial Council, that he has communicated with Dr. A. T. Talley, Chairman of the Board of Censors of Harris County Medical Society. Doctor Follansbee informs me that he asked Doctor Talley to send him a copy of the constitution and by-laws of the Harris County Medical Society and a copy of the constitution and by-laws of the State Medical Association of Texas but that this material has not been received by him. I shall appreciate it very much if you will be good enough to send the copies of the constitutions and by-laws of the Harris County Medical Society and the State Medical Association of Texas to Doctor Follansbee, whose address is Dr. George Edward Follansbee, 629 Euclid Avenue, Cleveland, Ohio. I shall also appreciate it, if it is not too much trouble, if you will send copies of such constitutions and by-laws to me so that I may

have them available for the next meeting of the Judicial Council to be held about June 12.

Very sincerely yours, Olin West.

OW:HN.

Gov. Ex. 570

District of Columbia:

To Whom It May Concern

I have known Dr. G. B. Trible for a number of years. He has treated and operated upon members of my family and friends, and patients I referred during this time. When I left the Veterans Bureau and started organizing the G. H. A. I naturally asked his advice and assistance, thinking that it could be organized along lines compatible with organized medicine. He stated he could not have anything to do with it, or anything else unless it met the full approval of the District Medical Society. He therefore did not at any time have any relations with the G. H. A. and at no time was a member of their staff, either as a regular member or consultant.

Later, after I resigned from that organization, he advised me to make my application to the District of Columbia Medical Society, and was one of my sponsors.

(Signed) Henry Roy Brown.

Subscribed and sworn to before me this 17th day of May, 1938. Elsie M. Freeman, Notary Public, D. C. My commission expires Feb. 14, 1943.

Gov. Ex. 588

The Medical Society of the District of Columbia,

1718 M Street N. W.,

Washington

July 29, 1937.

To the Superintendent:

Pursuant to action of the Executive Committee, held on the evening of July 12, 1937, and in fulfilment of Chapter IX,

Article IV, Section 5 of the Constitution, your attention is hereby called to the list of organizations, groups and individuals herewith enclosed. The approved list is on file with the Secretary's Office. The amendment is now in force. Any violation thereof will make a member liable according to the provisions of the Constitution:

Chapter IX, Article IV, Sec. 5:

"No member of the Society shall engage in any professional capacity whatsoever with any organization, group or individual, by whatever name called or however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, which has not been approved by the Society.

"The Executive Committee is authorized and directed to prepare an approved list of organizations, groups and individuals, by whatever name called and however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, and the same shall be kept in the office of the Secretary-Treasurer. Before any such organization, group or individual can be placed on the approved list of the Society, such organization, group or individual, or the member of the Society proposing professional relations therewith, shall submit to the Compensation, Contract and Industrial Medicine Committee such evidence as the Committee or the Society may require showing the character, activities, financial condition and ethical standards of said organization, group or individual, and after considering the same, said committee shall make a report of its investigation and findings to the Executive Committee for such action as it may deem necessary."

Very truly yours, C. B. Conklin, M. D., Secretary.

The Medical Society of the District of Columbia,

1718 M Street

(Telephone: District 3111)

Approved List of Organizations, Groups and Individuals, Engaged in the Practice of Medicine Within the District of Columbia or Within 10 Miles Thereof. (Chapter IX, Article IV, Section 5 of the Constitution)

1. All members of the Medical Society of the District of Columbia.

2. Medical staffs of all hospitals, institutions and clinics, each member of which has been approved by the Medical Society of the District of Columbia.

3. The United States Government Medical Personnel on duty in the District of Columbia, or within 10 miles thereof, i. e., the United States Army, Navy, Public Health Service, and the Veterans' Administration.

4. The Health Officer and attached medical personnel.

5. Membership of the District of Columbia Dental Society.

6. Membership of the Homeopathic Medical Society.

7. Members of the Montgomery County (Md.), Prince Georges County (Md.), Fairfax County (Va.), and Arlington County (Va.) Medical Societies, who reside within 10 miles of the District of Columbia.

8. Members of the Alexandria Medical Society.

9. The following Compensation Clinics:

Operated by

Farragut Medical Clinic, Frank E. Gantz, M. D.
First Aid Station, Arch L. Riddick, M. D.
Harry M. Lewis Clinic, Harry M. Lewis, M. D.
Market Compensation Accident Clinic, M. J. Kossow, M. D.
Northeast Insurance Clinic, G. Henry Rawson, M. D.
Union Market Workmen's Compensation Clinic, Maxwell Hurston, M. D.
Washington Industrial Accident Clinic, Edward Clark Morse, M. D.
Washington Medical Building Workmen's Clinic, Charles S. White, M. D.

10. All medical personnel employed by the Federal or Municipal Governments within the District of Columbia or within 10 miles thereof.

11. Membership of the Medico-Chirurgical Society (colored Medical Society).

12. Membership of the Robert T. Freeman Dental Society (colored Dental Society).

Instructions to Applicants

This form of application is for the use of all applicants. Indicate the class application for license is applied for by checking appropriate section on first page of application.

1. Write legibly, and with ink. Avoid alterations and interlineations as far as possible; if any be made, have them duly attested by the notary or other officer before whom this application is executed.

2. This application must be accompanied by—

(a) Proof of good moral character.

(b) A diploma conferring upon the applicant the degree of doctor of medicine, or other degree in the healing art.

(c) The required fee as indicated under the class designation on the first page of application. This fee, if sent by mail, should be in the form of a post office money order, draft, or certified check, payable to the Collector of Taxes, D. C., stating the purpose to which it is to be applied.

(d) Recent, unmounted photograph, post card size.

Note.—Applicants applying for license who are already licensed in the District of Columbia, under the Act of June 3, 1896, are not required to submit diploma of degree conferred.

The diploma will be returned to the applicant when he appears for examination; or returned to him by express or registered mail, at his risk and cost, upon request, as soon as his application has been formally acted upon by the Commission on Licensure.

3. This application, properly executed, must have been filed with the Secretary-Treasurer of the Commission on Licensure not less than two weeks prior to the commencement of the examination at which the applicant desires to appear. The regular examinations begin on the second Monday in January and July of each year.

4. A notice of the time and place of examination will be mailed to each applicant not less than seven days before the commencement of such examination.

5. The Commission on Licensure may require such additional information as it may deem necessary. Especial attention is invited to the fact that any application not properly executed, or for any other irregularity, may be rejected.

6. When properly filled out and sworn to, this application should be forwarded to the Secretary-Treasurer, Commission on Licensure, Healing Arts Practice Act, District of Columbia, Room 203, District Building, Washington, D. C.

The Medical Society of the District of Columbia

1718 M Street

Washington

Resolution adopted by the Society, in session on the evening of December 1, 1937:

Resolved, That as a matter of educational policy the Medical Society of the District of Columbia strongly recommends that all hospitals engaged in the teaching and training of residents, interns, and nurses, where possible, follow the recommendation of the American Medical Association regarding the constitution of their entire Medical Staffs, namely, that each appointee be a member of the Medical Society of the District of Columbia or a local medical society in this immediate neighborhood and a member of the American Medical Association.

Gov. Ex. 589

The Medical Society of the District of Columbia

Successor (1911) to the Medical Society of the District of Columbia, Founded September 26, 1817, and the Medical Association of the District of Columbia, Founded January 11, 1833

1718 M Street

Washington

Office of Secretary-Treasurer

December 2, 1937.

Chief of Staff, Casualty Hospital, 8th and Massachusetts Avenue, N. E., Washington, D. C.

DEAR DOCTOR:

Pursuant to formal action of the Medical Society of the District of Columbia, in session on the evening of December 1, 1937, the attached resolution is sent you.

Very truly yours, C. B. Conklin, M.D., Secretary.

CBC/dw.
Encl.

115—6879

Gov. Ex. 590

Eastern Dispensary and Casualty Hospital

Massachusetts Ave. at Eighth St., N. E.

Washington, D. C.

Report of the Credentials Committee, June 13, 1938

The following is a list of the applications considered by this Committee and it is recommended that they be approved for membership on the Courtesy Staff:

Dr. Charles C. Marbury, Internal Medicine.
Dr. J. Lloyd Collins, General Surgery.
Dr. W. Calhoun Stirling, Urology.
Dr. Samuel J. Sugar, Medicine, Minor Surgery and Obstetrics.
Dr. James H. Truitt, General Medicine.
Dr. William H. Beard, Obstetrics and Gynecology.
Dr. Robert Sterling McGrath, Allergy.
Dr. Ashby Wade Smith, General Medicine.
Dr. J. C. Pyle, General Medicine.
Dr. C. Edwin McNamara, General Surgery.

The application of Dr. Raymond E. Selders has been duly considered and it is the opinion of this Committee that the qualifications and experience of the applicant at this time are such that disapproval of the application is recommended.

J. Rogers Young, Chairman, —— ——, C. C. Caylor.

Gov. Ex. 591

Eastern Dispensary and Casualty Hospital

Massachusetts Ave. at Eighth St., N. E.

Washington, D. C.

June 16, 1938.

Dr. Raymond E. Selders, Acting Medical Director, Group Health Association, Washington, D. C.

Dear Dr. Selders:

This is to inform you that at the regular monthly meeting of the Board of Directors of this Institution, held June 14,

1938, your application for membership to the Courtesy Staff was disapproved.

Very truly yours, J. Burr Piggott, M.D., Acting Chief of Staff, Eastern Dispensary and Casualty Hospital.

JBP/h.

Present at the meeting were the following:

Dr. J. Burr Piggott	Dr. William G. Young
Dr. Tomas Cajigas	Dr. Albert E. Pagan
Dr. C. C. Caylor	Dr. A. Magruder MacDonald
Dr. J. Rogers Young	Dr. O. H. Fulcher
Dr. Frank W. Braden	Dr. William C. Meloy

The meeting was adjourned at 1:50 p. m. and a buffet luncheon was served to those attending.

J. Rogers Young, Secretary.

Eastern Dispensary and Casualty Hospital
Mass. Avenue at Eighth St., N. E.
Washington, D. C. (Stamp.)

Dr. Raymond E. Selders,
Acting Medical Director,
Group Health Association,
1328 Eye Street N. W.,
Washington, D. C.

Gov. Ex. 592

The meeting of the Medical Staff of the Eastern Dispensary and Casualty Hospital was held at the Hospital, June 14, 1938 at 1:15 p. m. Dr. J. Burr Piggott, Acting Chief of Staff, presided.

This meeting was devoted to the election of officers for the coming year, and to take action upon reports of the committees. Dr. J. Burr Piggott, Acting Chief of Staff, continued as president of the staff, and the following members were elected to represent the Staff on the Executive Committee: Dr. C. C. Caylor, Dr. William G. Young, and Dr. Tomas Cajigas. Dr. Tomas Cajigas formally presented his resignation as Secretary of the Medical Staff,

stating that because of the pressure of his practice he would not be able to devote much time to the duties of this position. Dr. Cajigas offered the name of Dr. J. Rogers Young as secretary and treasurer of the Staff, and this was seconded by Dr. A. Magruder MacDonald. Dr. Young was unanimously elected Secretary for the coming year.

The report of the Credentials Committee was read by the Chairman of the Committee as follows: "The following is a list of the applications considered by this Committee and it is recommended that they be approved for membership on the Courtesy Staff:

Dr. Charles Marbury, Internal Medicine.
Dr. J. Lloyd Collins, General Surgery.
Dr. W. Calhoun Stirling, Urology.
Dr. Samuel J. Sugar, Medicine, Minor Surgery and Obstetrics.
Dr. James H. Truitt, General Medicine.
Dr. William H. Beard, Obstetrics and Gynecology.
Dr. Robert Sterling McGrath, Allergy.
Dr. Ashby Wade Smith, General Medicine.
Dr. J. C. Pyles, General Medicine.
Dr. C. Edwin McNamara, General Surgery.

The application of Dr. Raymond E. Selders has been duly considered and it is the opinion of this Committee that the qualifications and experience of the applicant at this time are such that disapproval of the application is recommended." Signed: J. Rogers Young, Chairman, A. Magruder MacDonald, C. C. Caylor. The report was then discussed by Dr. MacDonald and Dr. William G. Young; it was voted to accept the report as read. Motion was made by Dr. Tomas Cajigas and seconded by Dr. MacDonald that the application of Dr. Thomas F. Law for membership on the Courtesy Staff be referred to the Washington Gynecological Society for recommendation. The regulations governing the admission of patients to Garfield Memorial Hospital upon the application of physicians and surgeons not members of the Courtesy Staff was read by the Secretary as follows:

"The word 'Emergency' is defined, for the purpose of the use of the facilities of the hospital by physicians and surgeons not admitted to the Courtesy Staff of the hospital, as some condition in which the life or safety of the patient

is endangered, except for some immediate intervention by the physician involved in the way of first aid, as in the case of hemorrhage, asphyxia, or the like. In cases in which there is time for the formal posting of an operation the hospital holds that there is also time to secure the services of a surgeon who has been granted the surgical privileges of the hospital; and that course of action will hereafter be required upon application for the admission of any patient by a physician or surgeon not on the Courtesy Staff. Under the conditions stipulated, members of Group Health Association will be admitted to the Hospital just as any other person is admitted, subject to available space and the suitability of the patient in other respects. In the case of physicians and surgeons not members of the Courtesy Staff of the Hospital, the above will govern the admission of the patients of these physicians and surgeons." Signed: Francis J. Eisenman, M. D., Superintendent. Upon motion of Dr. MacDonald, seconded by Dr. Cajigas, it was voted to recommend to the Governing Body that a similar regulation be put into effect in this Hospital.

Gov. Ex. 593

The regular monthly meeting of the Medical Staff of the Eastern Dispensary and Casualty Hospital was held October 6, 1938 at 1:15 p. m., Dr. J. Burr Piggott, Acting Chief of Staff, presiding.

(Excerpt)

The minutes of the last meeting, held Sept. 1, 1938, were read and accepted as read. Letters of communication in reference to the re-application of Dr. Raymond E. Selders for membership to the Courtesy Staff of this Hospital were read, and a discussion followed, resulting in a decision to submit the application to the Credentials Committee and allow it to be carried through the regular procedure. The decision put to a vote was moved and seconded and carried unanimously.

• • • • • • •

The meeting was adjourned on motion at 1:50 p. m. A buffet luncheon was served to those preesnt. The following members attended:

Professional Staff:

Dr. J. Burr Piggott	Dr. William C. Meloy
Dr. Albert E. Pagan	Dr. John R. Dull
Dr. G. W. Leadbetter	Dr. J. Rogers Young
Dr. Francis Allman	Dr. William G. Young
Dr. A. T. Young	Dr. Tomas Cajigas
Dr. O. H. Fulcher	Dr. Leo Solbach
Dr. Robert Bolton	Dr. Frank M. Hand

Courtesy Staff:

Dr. James H. Truitt

Intern Staff:

Dr. James W. Braden	Dr. Sherman E. Herrold
Dr. Richard Gitter	Dr. Warren G. Fletcher
Dr. Herman J. Horvitz	Dr. Ross Jung
Dr. Kenneth J. Harmon	Dr. Bernard La Belle

J. Rogers Young, M. D., Secretary.

Staff meeting 11-3-38

Intern Staff:

Dr. James W. Braden	Dr. Sherman Herrold
Dr. Kenneth J. Harmon	Dr. Bernard La Belle
Dr. Ross Jung	Dr. Herman J. Horvitz

(Signed) J. Rogers Young, Secretary.

Gov. Ex. 594.

The regular monthly meeting of the Medical Staff of the Eastern Dispensary and Casualty Hospital was held November 3, 1938 at 1:15 p. m. Dr. J. Burr Piggott, Acting Chief of Staff, presided.

(Excerpt)

The minutes of the last meeting, held October 6, 1938, were read and accepted as read. The report of the Credentials Committee was read by the secretary and a list of applications which had been passed by this committee was read, voted upon and unanimously approved as follows:

Dr. Truman Abbe, Neoplastic Surgery.
Dr. Robert U. Cooper, General Surgery.
Dr. Ronald A. Cox, Ophthalmological Surgery.
Dr. William J. P. Howard, General Medicine.
Dr. Martin J. Keane, Surgery and Medicine.
Dr. Maurice J. Kossow, General Medicine; minor surgery.
Dr. Thomas E. Latimer, General Surgery.
Dr. Kenneth F. Laughlin, General Surgery.
Dr. Thomas F. Law, Gynecological Surgery.
Dr. John H. Lyons, General Surgery.
Dr. Paul S. Putzki, Surgery.
Dr. Duane C. Richtmeyer, Surgery.
Dr. Fred R. Sanderson, Surgery.
Dr. Howard L. Smith, Surgery.
Dr. Karl Hayden Wood, Exodontia and Oral Surgery.

* * * * * * *

The meeting was adjourned at 1:55 p. m. on motion duly seconded and carried, and a luncheon was served to the following members of the staff:

Professional Staff:

Dr. J. Burr Piggott
Dr. J. Rogers Young
Dr. Albert E. Pagan
Dr. O. H. Fulcher
Dr. A. Magruder MacDonald
Dr. A. T. Young
Dr. Leo Solbach
Dr. Frank W. Braden
Dr. William C. Meloy
Dr. L. M. Jimal
Dr. C. C. Caylor

Courtesy Staff:

Dr. Clarence A. Weaver
Dr. James H. Truitt
Dr. Ray F. Guynn

Intern Staff:

Dr. James W. Braden
Dr. Kenneth J. Harmon
Dr. Ross Jung
Dr. Sherman Herrold
Dr. Bernard La Belle
Dr. Herman J. Horvitz

(Signed) J. Rogers Young, Secretary.

Gov. Ex. 595

Executive Committee—Professional Staff

Eastern Dispensary and Casualty Hospital—1938

Dr. Claude C. Caylor
Dr. William G. Young
Dr. Tomas Cajigas

Gov. Ex. 596

Credentials Committee—Professional Staff

Eastern Dispensary and Casualty Hospital—1938

Dr. J. Rogers Young, Chairman
Dr. A. Magruder MacDonald
Dr. Claude C. Cayler

Gov. Ex. 597

Interns Committee—Professional Staff—1938

Eastern Dispensary and Casualty Hospital

Dr. J. Burr Piggott, Chairman
Dr. J. Rogers Young
Dr. Francis C. Allman

Gov. Ex. 598

Records Committee—Professional Staff—1938

Eastern Dispensary and Casualty Hospital

Dr. J. Rogers Young, Chairman
Dr. O. H. Fulcher
Dr. Claude C. Caylor

Gov. Ex. 599

Executive Committee—Professional Staff—1937

Eastern Dispensary and Casualty Hospital

Dr. J. Burr Piggott, Chairman

Dr. J. Rogers Young Dr. William G. Young

Gov. Ex. 600

Records Committee—Professional Staff—1937

Eastern Dispensary and Casualty Hospital

Dr. J. Burr Piggott, Chairman

Dr. J. Rogers Young Dr. Robert M. Bolton

Gov. Ex. 601

Interns Committee—Professional Staff—1937

Eastern Dispensary and Casualty Hospital

Dr. A. Magruder MacDonald, Chairman

Dr. Claude C. Caylor Dr. J. Rogers Young

Gov. Ex. 603

Credentials Committee—Professional Staff—1937

Eastern Dispensary and Casualty Hospital

Dr. Albert E. Pagan, Chairman

Dr. Robert E. Bolton Dr. William C. Meloy

Gov. Ex. 603

Professional Staff for Eastern Dispensary and Casualty Hospital

1938

Division of General Surgery. Consultant: Dr. Edmund Horgan.

Attending: Dr. J. G. Lewis, Chief of Staff; Dr. J. Burr Piggott, Acting Chief of Staff; Dr. J. Rogers Young.

Associate: Dr. A. Magruder MacDonald, Dr. Russell K. Hollingsworth.

Division of Plastic Surgery. Attending: Dr. William Carey Meloy.

Division of Neurological Surgery. Attending: Dr. Oscar Hugh Fulcher.

Division of Orthopedic Surgery. Consultant: Dr. G. W. Leadbetter.

Attending: Dr. Frank M. Hand.

Division of Genito-Urinary Surgery. Attending: Dr. William G. Young.

Division of Opthalmological Surgery. Consultant: Dr. William Thornwall Davis.

Division of Surgical Pathology. Attending: Dr. Tomas Cajigas.

Division of Dental Surgery. Consultant: Dr. Sterling Mead.

Attending: Dr. Howard J. Newton.

Associate: Dr. Daniel F. Lynch, Dr. Leo Solbach.

Division of General Medicine. Consultant: Dr. J. Lawn Thompson.

Division of Anesthesia. Attending: Dr. Robert Bolton.

Associate: Dr. John R. Dull, Dr. Louis M. Jimal, Dr. William H. Clements.

Division of Pediatrics. Consultant: Dr. Coursen B. Conklin.

Division of Obstetrics. Consultant: Dr. Howard F. Kane.

Attending: Dr. Frank W. Braden.

Division of Gynecology. Attending: Dr. Albert E. Pagan.

Associate: Dr. A. T. Young.

Division of Dermatology. Consultant: Dr. C. Augustus Simpson.

Division of Ear, Nose and Throat. Consultant: Dr. S. A. Alexander.

Attending: Dr. Fordyce A. H. Johnson.

Division of Radiology. Attending: Dr. Claude C. Caylor.

Associate: Dr. Francis Allman.

Gov. Ex. 604

Professional Staff for Eastern Dispensary and Casualty Hospital

1937

Division of General Surgery: Dr. Edmund Horgan, Consultant; Dr. J. G. Lewis, Chief Surgeon and Chief of Staff; Dr. A. Magruder MacDonald, Associate in Surgery; Dr. J. Burr Piggott, Associate; Dr. J. Rogers Young, Associate; Dr. Russell K. Hollingsworth, Associate.

Division of Plastic Surgery: Dr. William C. Meloy.

Division of Neurological Surgery: Dr. John J. Shugrue.

Division of Orthopedic Surgery: Dr. G. W. Leadbetter, Consultant; Dr. Frank M. Hand, Chief of Service; Dr. Phillip O. Pelland, Associate.

Division of Genito-Urinary Surgery: Dr. William G. Young, Chief of Service; Dr. W. Calhoun Stirling, Associate; Dr. Adam Kemble, Associate; Dr. Thomas C. Thompson Associate.

Division of Opthalmological Surgery: Dr. William Thornwall Davis.

Division of Surgical Pathology: Dr. Tomas Cajigas, Chief of Service.

Division of Anesthesia: Dr. Robert M. Bolton, Chief of Service; Dr. John R. Dull, Associate; Dr. Louis M. Jimal, Associate; Dr. James C. Waters, Associate.

Division of General Medicine: Dr. J. Lawn Thompson, Consultant.

Division of Pediatrics: Dr. Coursen B. Conklin.

Division of Obstetrics: Dr. Howard F. Kane, Consultant; Dr. Frank W. Braden, Chief of Service.

Division of Dermatology: Dr. C. Augustus Simpson, Consultant; Dr. H. F. Anderson, Chief of Service; Dr. Russell J. Fields, Associate.

Division of Gynecology: Dr. Albert E. Pagan, Chief of Service; Dr. A. T. Young, Associate.

Division of Ear, Nose and Throat: Dr. S. A. Alexander, Consultant; Dr. Fordyce A. H. Johnson, Chief of Service.

Division of Radiology: Dr. Claude C. Caylor, Chief of Service; Dr. Casimir Leibell, Associate; Dr. Francis Allman, Associate.

Division of Dental Surgery: Dr. Sterling Mead, Consultant; Dr. Howard J. Newton, Chief of Service; Dr. Daniel F. Lynch, Associate; Dr. Leo W. Solbach, Associate.

Gov. Ex. 605

Group Health Association, Incorporated

1328 Eye Street, N.W.

Washington, D. C.

July 28, 1938.

Mr. Samuel H. Rogers
President, Board of Trustees
Eastern Dispensary & Casualty Hospital
Massachusetts Avenue at Eighth Street, N.E.
Washington, D. C.

MY DEAR MR. ROGERS:

In view of Justice Bailey's decision yesterday establishing the legality of Group Health Association, Inc., it is respectfully requested that Dr. Raymond E. Selders, a member of our staff, be admitted to the courtesy staff of Eastern Dispensary & Casualty Hospital, and that he may attend members of this Association admitted as patients there.

We shall appreciate the courtesy of an early reply.

Very truly yours, W. C. Kirkpatrick, President.

Gov. Ex. 607

(Excerpts)

The Journal of the American Medical Association Proceedings of House of Delegates, AMA, June 10-14, 1935.

(Page 7)

The increasing circulation of The Journal, the innumerable references to its columns in medical and lay periodicals and in newspapers throughout the world, and the great number of letters received from subscribers testify to the almost universal appreciation of this publication. Several series of special articles, notably those on glandular therapy and on the therapy of the Cook County Hospital, have attracted special attention. Arrangements are being made to republish the first series in several foreign languages. The department of questions and answers has gradually assumed increasing significance as a source of reference for the general practitioner. Many comments indicate that its practical value is generally realized. The Journal continues to serve as the voice of the organized medical profession of the United States, reflecting not only scientific advancement but also the interest of the profession in medical education and medical economics.

The average number of copies of The Journal printed weekly during the year 1935 was 88,843. The net paid circulation, Dec. 31, 1935, was 89,179, an increase of 4,344 over the net paid circulation on a similar date in the previous year.

(Page 20)

Bureau of Medical Economics

The Bureau of Medical Economics has been under a constant stress during the past year investigating economic problems, preparing reports for distribution to the medical profession and advising physicians throughout the country concerning special medical economic problems in various states. This was especially true concerning sickness insurance. During the latter part of 1934 and the first half of 1935 approximately 182,000 reprints of the Bureau of Medical Economics pertaining to sickness insurance were circulated through medical societies and individual physicians and a considerable number were sent directly to lay persons throughout the United States; this circulation was in addition to the articles published in The Journal and the Bulletin. (23) (51) (52)

(Page 23)

Relation of Medical Ethics and Medical Economics

Practically all economic transactions involve an ethical implication, good or bad. Many of the principles of medical ethics carry some economic implication.

Since ethics and economics seem to have a definite relationship, an endeavor has been made to set forth these relations in a report entitled "Economics and the Ethics of Medicine."

This report begins with a discussion of the ethics and economics of industry, business and commerce. This chapter is followed by an analysis of the Oath of Hippocrates, with some reference to the similarity of the wording of the oath in Greek, Arabic, Latin and East Indian. The development of medical ethics is then traced in modern times. A chapter is devoted to the medical group and the influence which ethical principles have exercised in cementing and maintaining physicians in an organized group.

The remainder of the report is devoted to an examination of the economic implications in the Principles of Medical Ethics of the American Medical Association. (24) (51) (52)

(Page 36)

Cooperation with Council on Medical Education and Hospitals

Certain recommendations made in the last annual report of the Judicial Council and approved by the 1935 House of Delegates to the end that closer cooperation between the Judicial Council and the Council on Medical Education and Hospitals be developed have been complied with. The chairman attended a meeting of the Council, explained the need for closer study between the councils, and was assured that the desire of the House of Delegates would receive sympathetic compliance. The Judicial Council believes that the way thus has been opened for classification of and assistance in some of the problems of the general medical profession which come before it for advice, assistance and decision. (47) (48)

(Page 37)

Group Hospitalization

Group hospitalization and individual hospital insurance plans have been rapidly spreading during the last few years

as an effort on the part of hospitals to collect full payment for the hospitalization of people of low income groups who in the past have been and in the future will otherwise be unable to pay their hospital costs. This effort has been accentuated by the recent increase in the numbers of such cases combined with a great reduction in hospital income from endowment funds and public contributions. It is an effort at self preservation and secondarily to fix responsibility on a group that during the depression has been rapidly growing among those who have little sense of personal responsibility and rather expect government or charity to care for their needs. Hospital insurance as an economic device now exists almost nationally and is spreading. The American Hospital Association and various state hospital association are actively promulgating it.

Whether the scheme is or is not financially or economically sound is not the problem of our organization, but it is our business to see that the furnishing of medical service is not included in the sale of insured hospital accommodations. This can be done if a strong stand is taken and maintained by the organized medical profession, which must keep a watchful eye to see that medical care is not initially or later included when the usual sales efforts demand increased benefits to purchasers. It is well known that at the present time independently of the hospital insurance movement various hospitals are invading the field of the practice of medicine, sometimes at and sometimes against the desire of the members of our profession involved in such instances. It would seem that in this time of extensive changes in hospital economics the point had arrived at which further marriages between hospitals and staff physicians that make the doctor of medicine the servant of the hospital should be stopped and a series of attempts at divorce among marriages that have already taken place should be instituted. Our accepted ethical principles are adequate at the present time and the cooperation of the Council on Medical Education and Hospitals would be of invaluable assistance. It is not an impossible task but will need a militant local and national ethical spirit behind it and a frowning on those individuals in the profession who on personal grounds do not object to the gradual subjugation of the medical profession in the growth of hospital domination. (47) (48)

(Page 38)

Report of Council on Medical Education and Hospitals

General Merritte W. Ireland, Washington, D. C., presented the following report of the Council on Medical Education and Hospitals, which was referred to the Reference Committee on Medical Education: (45) (46)

To the Members of the House of Delegates of the American Medical Association:

I. Resolutions of the House of Delegates

1. The House of Delegates at the Cleveland session adopted the following resolution:

Resolved, That it is the opinion of the House of Delegates of the American Medical Association that physicians on the staffs of hospitals approved for intern training by the Council on Medical Education and Hospitals should be limited to members in good standing of their local county medical societies and that the House of Delegates requests the Council on Medical Education and Hospitals to take this under advisement.

The Council has brought this resolution to the attention of all hospitals approved for intern training and it is planned to check staff memberships in connection with all the inspections of hospitals engaged in training interns. In this manner the Council will ascertain to what extent hospitals have complied with the foregoing resolution. (45)

2. In its report at Atlantic City last year the Judicial Council referred to the improved methods of administering the Principles of Medical Ethics. It was stated that while each member of the American Medical Association, whether in hospitals, in universities, in clinics or in private practice, is at all times subject to the ethics of the profession, the hospital, university or clinic as an entity is not and that by concerted action between the Council on Medical Education and Hospitals and the Judicial Council many harmful and obnoxious practices would cease and others, not now presenting any large problem, would be prevented.

For the purpose of carrying out the recommendation of the House of Delegates, the secretary of the Council on Medical Education and Hospitals has appeared before the

Judicial Council and the chairman of the Judicial Council has met with the Council on Medical Education and Hospitals and it has been agreed that the latter council, in connection with its regular inspections, will secure such additional information regarding certain phases of hospital practice as may be requested by the Judicial Council. (45)

(Page 45)

Report of Reference Committee on Medical Education

Dr. George Blumer, Chairman, presented the following report:

Report of the Council on Medical Education and Hospitals

1. Your committee approves the general principle that physicians on the staffs of hospitals approved for intern training should be limited to members in good standing of their local county medical societies. (38)

2. Your committee commends the activities of the Council on Medical Education and Hospitals in its attempt to improve the methods of administering the Principles of Medical Ethics in connection with the Judicial Council, as discussed in section 2 of its report. (38)

Dr. Blumer moved that the portion of the report of the reference committee dealing with the report of the Council on Medical Education and Hospitals be adopted, and the motion was seconded by Dr. Arthur C. Morgan, Pennsylvania.

(Page 46)

The motion of Dr. Blumer to adopt the portion of the report of the reference committee dealing with the report of the Council on Medical Education and Hospitals was then carried. (38-39) (45)

(Page 47)

5. Relative to the report of the Judicial Council, your committee notes that the recommendation of the Judicial Council at the last annual session suggesting a closer alliance between the Judicial Council and the Council on Medical Education and Hospitals has been complied with

and that satisfaction has resulted from this cooperation. (36) (48)

Your committee considers that the invasion by hospitals of the field of the practice of medicine should be condemned as a violation of the fundamental rights of physicians and that it demands militant opposition to the end that such activities cease. (37) (48)

(Page 48)

Dr. Cary moved that section 5 of the report of the reference committee, referring to the report of the Judicial Council, be adopted. The motion was seconded by Dr. Arthur J. Bedell, New York, and carried. (36-38) (47)

(Page 51)

12. "Relation of Medical Ethics and Medical Economics": It is unfortunate that this material is not completed and ready for distribution at this time. Your committee commends this effort on the part of the Bureau of Medical Economics to call attention to the economic implications in the Principles of Medical Ethics. Although it is not stated that the Judicial Council has officially construed the various rules referred to in this discussion of the Principles of Medical Ethics, the committee understands that great care has been taken and advice has been had from the Council in determining that the implications set forth are sound in basis. Your committee recommends that as soon as this material is available it shall have broad distribution and shall be given study in the various component county societies, where the responsibility for the enforcement of ethical principles must reside. It must be recognized that unfair economic practice reflects on all and should be just as much a matter of interest to the component society as is other unethical practice. (23) (24) (52)

(Page 60)

Membership in County and State Associations for Members of Staffs of Hospitals

Dr. G. Henry Mundt, Illinois, asked that Dr. W. D. Cutter, Secretary of the Council on Medical Education and

Hospitals, be requested to address the House of Delegates with respect to the progress made in carrying out the provisions of a resolution adopted at the Cleveland session, which declared that members of approved hospital staffs should be members of component county and constituent state associations.

Dr. Cutter addressed the House, declaring that progress had been made in carrying out the purposes expressed in the resolution and explaining the difficulties that had been encountered. He expressed the opinion that it would require a considerable time to accomplish the desired ends but stated that the Council was in sympathy with the purposes of the resolution and would continue its efforts to secure the accomplishment of those purposes.

Gov. Ex. 610

Georgetown University Hospital

Washington, D. C.

March 4, 1938.

Dr. Raymond E. Selders, 1328 Eye St., N. W., Washington, D. C.

DEAR DOCTOR SELDERS:

At the meeting of the Executive Staff of the Georgetown University Hospital your application to treat minor surgical, major surgical and gynecological cases in the hospital was rejected.

Very sincerely yours, Fred O. Coe, M. D., Secretary, Executive Staff.

Gov. Ex. 612

The George Washington University

Interdepartmental Memoranda

Committee on Hospital Privileges, 1937-38

Surgical: Dr. Charles S. White.
Medical: Dr. William J. Mallory.
Obstetrical & Gynecological: Dr. Howard F. Kane.

Gov. Ex. 613

George Washington University Hospital

Schedule of Staff Service

1937

Medicine

January, February and March: Dr. Herman S. Hoffman.
April, May and June: Dr. Frank A. Hornaday.
July, August and September: Dr. John A. Reed.
October, November and December: Dr. William J. Mallory.

Surgery

January, February and March: Dr. Arch L. Riddick, Dr. J. Lloyd Collins.
April, May and June: Dr. W. Warren Sager, Dr. Benjamin F. Dean.
July, August and September: Dr. Paul S. Putzki, Dr. William W. Chase.
October, November and December: Dr. Arch L. Riddick, Dr. J. Lloyd Collins.

Orthopedics

January-June: Dr. Julius S. Neviaser.
July-December: Dr. Philip O. Pelland.

Dermatology

Entire Year: Dr. George W. Creswell, Dr. Russell J. Fields.

Ophthalmology

January 1-February 28: Dr. C. Victor Simpson.
March 1-May 15: Dr. Ernest Sheppard.
May 16-July 31: Dr. E. Leonard Goodman.
August 1-October 15: Dr. Ronald Cox.
October 16-December 31: Dr. Benjamin Rones.

Otolaryngology

January and February: Dr. Don Johnson.
March and April: Dr. David Davis.
May and June: Dr. Aubrey Fischer.
July and August: Dr. Lyman Tibbets.
September and October: Dr. Jeter C. Bradley.

Urology

Dr. Frederick A. Reuter.
Dr. Gilbert Ottenberg.

Obstetrics and Gynecology

Dr. Howard F. Kane, Head of Department

Gynecology

Dr. E. W. Titus, Chief of Division

January, February and March: Dr. Henry L. Darner, Chief, Dr. Howard P. Parker, Associate.
April, May and June: Dr. Herbert P. Ramsey, Chief, Dr. Walter W. Boyd, Associate.
July, August and September: Dr. Radford Brown, Chief, Dr. Walter W. Boyd, Associate.
October, November and December: Dr. Jacob Kotz, Chief, Dr. Howard P. Parker, Associate.

Obstetrics

Dr. W. P. Haynes, Chief of Division

January, February and March: Dr. Barnard Notes, Chief, Dr. Walter W. Boyd, Associate.
April, May and June: Dr. Samuel M. Dodek, Chief, Dr. Howard P. Parker, Associate.
July, August and September: Dr. Lawrence L. Cockerille, Chief, Dr. Howard P. Parker, Associate.
October, November and December: Dr. W. Raymond Thomas, Chief, Dr. Walter W. Boyd, Associate.

Out-Patient Department

Obstetrical and Gynecological Dispensary Throughout the Year

Monday: Dr. Helen G. Kain.
Tuesday: Dr. Howard P. Parker.
Wednesday: Dr. Esther Nathanson.
Thursday: Dr. Walter W. Boyd.
Friday: Dr. Elizabeth Parker.
Saturday: Dr. Harry S. Douglas.

Alternates: Dr. W. Raymond Thomas, Dr. Lawrence L. Cockerille.

Contraceptive clinic: Dr. George Nordlinger (Tuesdays and Thursdays).

Home deliveries: Dr. H. P. Ramsey, Dr. Bernard Notes, Dr. Samuel M. Dodek, Dr. Howard P. Parker, Dr. Walter W. Boyd.

Neurology

Dr. Walter Freeman, Chief of Service.
Dr. Hyman D. Shapiro, Associate.
Dr. James W. Watts, Associate (Neuro-surgery).

Psychiatry

Dr. Agnes Gregg.

Oto-Laryngological Clinical Schedule for Services at George Washington University Hospital from July, 1937, to June 30, 1938

July, August: Dr. Tibbetts.
September, October: Dr. Novick.
November, December: Dr. Bradley.
January, February: Dr. Don Johnson.
March, April: Dr. D. Davis.
May, June: Dr. Novick.

Gov. Ex. 613-A

Copy

George Washington University Hospital

Schedule of Staff Service

1938

Medicine

January, February and March, Dr. Herman S. Hoffman.
April, May and June, Dr. Frank A. Hornaday.
July, August and September, Dr. John A. Reed.
October, November and December, Dr. William J. Mallory.

Surgery

January, February and March, Dr. W. Warren Sager, Dr. Benjamin F. Dean, Jr.

April, May and June, Dr. Daniel L. Borden, Dr. Alec Horwitz.

July, August and September, Dr. Archi L. Riddick, Dr. J. Lloyd Collins.

October, November and December, Dr. Paul S. Putzki, Dr. William W. Chase.

Orthopedics

January-June, Dr. Julius Neviaser.
July-December, Dr. Philip O. Pelland.

Dermatology

Dr. George W. Cresswell, Entire year.
Dr. Harry F. Anderson, January to June.
Dr. Russell Fields, July to December.

Ophthalmology

January to March, Dr. G. Victor Simpson.
April to June, Dr. Ernest Sheppard.
July to September, Dr. E. L. Goodman.
October to December, Dr. Ronald A. Cox.

Oto-Laryngology

January and February, Dr. Ben R. Johnson.
March and April, Dr. David Davis.
May and June, Dr. Aubrey Fischer.
July and August, Dr. Lyman B. Tibbets.
September and October, Dr. Joel N. Novick.
November and December, Dr. Jeter C. Bradley.

Urology

Dr. Frederick A. Reuter, Dr. Gilbert Ottenberg.

Obstetrics and Gynecology

Dr. Howard F. Kane, Head of Department

Gynecology

Dr. E. W. Titus, Chief of Division

January, February and March, Dr. Henry L. Darner, Chief; Dr. Howard P. Parker, Associate.

April, May and June, Dr. Herbert P. Ramsey, Chief; Dr. Walter W. Boyd, Associate.

July, August and September, Dr. Radford Brown, Chief; Dr. Walter W. Boyd, Associate.

October, November and December, Dr. Jacob Kotz, Chief; Dr. Howard P. Parker, Associate.

Obstetrics

Dr. W. P. Haynes, Chief of Division

January, February and March, Dr. Bernard Notes, Chief; Dr. Walter W. Boyd, Associate.

April, May and June, Dr. Samuel M. Dodek, Chief; Dr. Howard P. Parker, Associate.

July, August and September, Dr. Lawrence L. Cockerille, Chief, Dr. Howard P. Parker, Associate.

October, November and December, Dr. W. Raymond Thomas, Chief; Dr. Walter W. Boyd, Associate.

Out-Patient Department

Obstetrical and Gynecological Dispensary (Entire Year)

Monday, Dr. Helen G. Kain.
Tuesday, Dr. Howard P. Parker.
Wednesday, Dr. Esther Nathanson.
Thursday, Dr. Walter W. Boyd.
Friday, Dr. Elizabeth Parker.
Saturday, Dr. Harry S. Douglas.
Alternates, Dr. W. Raymond Thomas, Dr. Lawrence L. Cockerille.

Contraceptive Clinic (Tuesday and Thursday) Dr. George Nordinger.

Home Deliveries: Dr. H. P. Ramsey, Dr. Bernard Notes, Dr. Samuel M. Dodek, Dr. Howard P. Parker, Dr. Walter W. Boyd.

Neurology

Dr. Walter Freeman, Chief of Service.
Dr. H. D. Shapiro, Associate.
Dr. James W. Watts, Associate (Neuro-Surgery).

Psychiatry

Dr. Agnes Gregg.

Oto-Laryngological Clinic Schedule

For Services at George Washington Hospital

Year of July 1, 1938 to June 30, 1939.

July, August, September, 1938, Dr. Don Johnson.
October, November, December, 1938, Dr. Joel Novick.
January, February, March, 1939, Dr. David Davis.
April, May, June, 1939, Dr. Lyman Tibbetts.

Gov. Ex. 614
Attending Physicians—Courtesy List
July 1, 1937–June 30, 1938
50 Not Members of D. C. Med. Soc.

Member D.C. Med. Society	Member American Medical Assoc.		
Yes	Yes	Abernathy, Theodore J	Internal Medicine
Yes	Yes	Albritton, Errett C	Physiology
Yes	Yes	Alexander, Samuel A	Ear, Nose and Throat
Yes	Yes	Anderson, Harry F	Dermatology
Yes	Yes	Atkinson, Wade H	General Medicine, Normal Obstetrics, Gynecology, Tonsillectomies & Minor Surgery
Yes	Yes	Ault, Garnet W	Proctology
Yes	Yes	Baber, John M	Minor Surgery
Yes	Yes	Bachrach, Louis B	General Surgery
Yes	Yes	Bacon, Robert B	Medicine
Yes	Yes	Ball, George L	Medicine
Yes	Yes	Barr, Eugene O	Surgery
Yes	Yes	Beard, William H	Gynecology and Obstetrics
Yes	Yes	Belair, Joseph F	Radiology
Yes	Yes	Belt, Norvell	Genito-urinary
Yes	Yes	Benton, Frederick L	Ophthalmology
Yes	Yes	Blajwas, Abe	Internal Medicine & Chest Diseases
Yes	Yes	Bloedorn, Walter A	Internal Medicine
Yes	Yes	Borden, Daniel LeRay	General Surgery
Yes	Yes	Bosworth, Robert J	Normal Obstetrics & Medicine
Yes	Yes	Bowen, William S	Obstetrics
Yes	Yes	Bowne, Charles J	Normal Obstetrics & Medicine

Member D.C. Med. Society	Member American Medical Assoc.		
Yes	Yes	Boyd, Walter W	Obstetrics and Gynecology
Yes	Yes	Braden, Frank W	Obstetrics
Yes	Yes	Bradley, Jeter C	Otolaryngology
Yes	Yes	Bradley, Thomas	General Surgery
Yes	Yes	Breeding, Earle G	Oto-laryngology
Yes	Yes	Briggs, Crenshaw D	Surgery
Yes	Yes	Brown, Radford	Gynecology
Yes	Yes	Brown, Leo T	Gastro-enterology
Yes	Yes	Brumbaugh, G. Marcus	Normal Obstetrics & Medicine
Yes	Yes	Cafritz, Edward A	Surgery
Yes	Yes	Cahill, James A	Surgery
Yes	Yes	Campbell, Charles B	Dermatology
Yes	Yes	Carr, Elma B	Normal Obstetrics & Medicine
No	Yes	Castell, Richard B	Gen. Med., Minor Surg., Normal Ob. & Tonsillectomies
Yes	Yes	Chapman, Katharine A	Normal Obstetrics & Medicine
Yes	Yes	Chase, William W	Surgery
Yes	Yes	Chenery, Alan J	Urology
Yes	Yes	Chickering, Elizabeth E	Pediatrics
Yes	Yes	Choisser, Roger M	Pathology
Yes	Yes	Claud, Harry L	Surgery
Yes	Yes	Cockerille, Lawrence E	Obstetrics & Gynecology
Yes	Yes	Cole H. Eugene	Surgery
Yes	Yes	Collins, J. Lloyd	Surgery
No	Yes	Collins, Thomas F	Medicine & Normal Ob.
Yes	Yes	Conklin, Coursen B	Medicine
Yes	Yes	Connor, Jack A	Surgery
Yes	Yes	Constantinople, P. S	Ear, Nose & Throat
Yes	Yes	Cousins, Sidney C	Medicine
Yes	Yes	Cox, Ronald A	Ophthalmology
Yes	Yes	Creswell, George W	Syphilology
No	Yes	Creveling, Cyrus R	Normal Ob. & Medicine
Yes	Yes	Cromer, Jerry K	Obstetrics & Gynecology
Yes	Yes	Cross, Allen S	General Medicine, Normal Ob., and Minor Surgery
Yes	Yes	Crowe, John W	Medicine
Yes	Yes	Culver, Cyrus W	Obstetrics & Medicine
Yes	Yes	Daniels, Worth B	Internal Medicine
Yes	Yes	Darnall, Moses H	Medicine
Yes	Yes	Darner, Henry L	Gynecology
Yes	Yes	Davis, David	Ear, Nose, Throat & Bronchoscopy
Yes	Yes	Davis, William T	Ophthalmology
Yes	Yes	Dean, Benjamin F., Jr	Surgery
Yes	Yes	DeSaussure, Richard L	Otolaryngology
Yes	Yes	Dessoff, Joseph	Ophthalmology
No	Yes	Detwiler, William S	Medicine
Yes	Yes	Dewey, George	Minor Surgery
Yes	Yes	Diats, Philip	Anesthesia
No	Yes	Dickens, Paul F	Internal Medicine
Yes	Yes	Dodek, Samuel M	Obstetrics & Gynecology
Yes	Yes	Douglas, Harry S	Endocrinology, Ob. & Gyn.
Yes	Yes	Dunkley, Richard E	Internal Medicine
Yes	Yes	Dunn, William LeRoy	Internal Medicine

Member D.C. Med. Society	Member American Medical Assoc.		
Yes	Yes	Earley, James H	Otolaryngology
Yes	Yes	Einstein, Hugo	Surgery & Gynecology
Yes	Yes	Ellison, Everett M	Internal Medicine
Yes	Yes	Enlows, Ella M. A	Otorhino-laryngology
Yes	Yes	Ethridge, Clayton B	Internal Medicine
Yes	Yes	Fadeley, James M	Urology
No	Yes	Feldman, Irvin	Otolaryngology
Yes	Yes	Ferguson, Charles E	Major Surgery (observe)
Yes	Yes	Fields, Russell J	Dermatology & Syphilology
Yes	Yes	Fischer, Aubrey D	Oto-laryngology
Yes	Yes	Fishback, Frederick C	Surgery
Yes	Yes	Fong, Theodore C. C	Syphilology
Yes	Yes	Freeman, Walter	Neurology & Psychiatry
Yes	Yes	French, Leslie H	Internal Medicine
No	Yes	Friedenberg, Harry	Internal Medicine
Yes	Yes	Fugitt, Elmer W	Medicine
Yes	Yes	Fulcher, Oscar H	Surgery
Yes	Yes	Fuller, Homer G	Urology
Yes	Yes	Gaffney, Leo B	Surgery
Yes	Yes	Gantz, Frank E	General Surgery
Yes	Yes	Gerber, Aaron H	General Medicine
No	Yes	Gibson, John A	Medicine
Yes	Yes	Gill, William T., Jr	Internal Medicine
No	Yes	Gillen, James H	General Surgery, Normal Ob. Operative Ob. & Gynecology
Yes	Yes	Glenn, Joseph B	Internal Medicine
Yes	Yes	Glover, Mervin W	Medicine, Normal Ob., and Minor Surgery
Yes	Yes	Golden, Benjamin	Surgery
Yes	Yes	Goldenberg, Carl	Internal Medicine
Yes	Yes	Goodman, Edgar L	Ophthalmology
Yes	Yes	Goodman, William D	Urology
Yes	Yes	Gordon, Leon S	Internal Medicine
Yes	Yes	Graeff, Earl W	Normal Obstetrics & Medicine
Yes	Yes	Gurwin, Bernard	Ophthalmology
Yes	Yes	Gwynn, William C	Surgery
Yes	Yes	Hagner, Francis R	Urology
Yes	Yes	Hall, Custis L	Orthopedics
No	Yes	Hall, Jesse L	General Medicine
Yes	Yes	Halley, Charles R. L	Internal Medicine
Yes	Yes	Hand, Frank M	Orthopedic Surgery
Yes	Yes	Hantman, Irvin	Ear, Nose & Throat
Yes	Yes	Hardin, Bernard L., Jr	Medicine
Yes	Yes	Harmon, Robert H	Internal Med., Normal Ob., & Minor Surgery
Yes	Yes	Harris, Joseph	Obstetrics & Gynecology
Yes	Yes	Hawfield, James	Surgery
Yes	Yes	Haynes, Preston	Obstetrics & Gynecology
Yes	Yes	Heath, A. Fife	General Medicine
Yes	Yes	Herbst, William P	Urology
Yes	Yes	Herschman, Myer J	Urology
Yes	Yes	Hertsberg, Herman	Gynecology and Obstetrics
Yes	Yes	Hess, Valentine M	Surgery
Yes	Yes	Hildenbrand, Emil J. C	Surgery
Yes	Yes	Hilton, James F	Medicine and T & A
Yes	Yes	Hixson, Clayton H	Gynecology & Obstetrics
Yes	Yes	Hoffman, Herman S	Internal Medicine

Member D.C. Med. Society	Member American Medical Assoc.		
Yes	Yes	Hollingsworth, Russell K.	Surgery
Yes	Yes	Holm, George A.	Internal Medicine
Yes	Yes	Horgan, Edmund	Major Surgery
Yes	Yes	Horgan, Joseph	General Surgery
Yes	Yes	Hornaday, Frank A.	Internal Medicine & Normal Ob.
Yes	Yes	Hornthal, Henry A.	Surgery & Gynecology
Yes	Yes	Horwitz, Alec	Surgery
Yes	Yes	Howlett, Howard H.	General Medicine & Normal Ob.
Yes	Yes	Hyde, Charles W.	Anesthesia
Yes	Yes	Iden, Benjamin F., Jr.	Nose & Throat
No	Yes	Jackson, Ruth	General Med., Ob. & Minor Surgery
Yes	Yes	Jackson, Virgil B.	Gynecology
Yes	Yes	Jenkins, William H.	Oto-laryngology
Yes	Yes	Johnson, Don	Ear, Nose and Throat
Yes	Yes	Johnson, Fordyce A. H.	Ear, Nose and Throat
Yes	Yes	Kane, Howard F.	Obstetrics
Yes	Yes	Karpeles, S. R.	Gynecology
Yes	Yes	Katzman, Howard	Gen. Med., Minor Surgery, Obstetrics and Anesthesia
Yes	Yes	Katzman, Sollie	Anesthesia
Yes	Yes	Kemble, Adam	Urology
Yes	Yes	Kerr, Harry H.	Anesthesia
Yes	Yes	Kossow, Maurice J.	Medicine and Obstetrics
Yes	Yes	Kotz, Jacob	Obstetrics & Gynecology
No	Yes	Krause, Edward A.	General Medicine
Yes	Yes	Kushner, David H.	Obstetrics & Gynecology
Yes	Yes	Leadbetter, Guy W.	Orthopedic Surgery
Yes	Yes	LeComte, R. M.	Urology
Yes	Yes	Leonard, Bernard W.	Internal Medicine
Yes	Yes	Levitt, Louis P.	Medicine
Yes	Yes	Lewis, Edward	Pediatrics
Yes	Yes	Lewis, Harry S.	General Surgery
Yes	Yes	Loftus, James M.	Operative Ob. & Gynecology
Yes	Yes	Luckett, L. Fleet	Internal Medicine
Yes	Yes	Lyons, John H.	General Surgery
Yes	Yes	McChesney, Frank M.	General Medicine
Yes	Yes	McGovern, F. X.	Surgery
Yes	No	McGrath, James L.	Dental Surgery
Yes	Yes	McLain, George	General Surgery & Gynecology
Yes	Yes	McLendon, Preston A.	Pediatrics
Yes	Yes	McNitt, Arnold	Internal Medicine
Yes	Yes	McNitt, H. J. Russell	Gynecology & Obstetrics
Yes	Yes	McNulty, Richard J.	Medicine
Yes	Yes	Machlis, Samuel A.	Ophthalmology
Yes	Yes	Macon, Edward B.	Anesthesia
Yes	Yes	Mallory, William J.	Internal Medicine
Yes	Yes	Mandelos, Nicholas A.	Tuberculosis
Yes	Yes	Manganaro, Raphael N.	Internal Medicine
Yes	Yes	Marbury, William B.	Surgery
Yes	Yes	Martyn, Herbert E.	Normal Ob. & Medicine
Yes	Yes	Meloy, William C.	Ear, Nose & Throat & Plastic Surg.

Member D.C. Med. Society	Member American Medical Assoc.		
Yes	Yes	Miller, William S.	Gen. Med., Normal Ob., Minor Surg. and Gynecology
Yes	Yes	Mitchell, Joseph E.	Normal Ob. & Medicine
Yes	Yes	Mitchell, James F.	Surgery
Yes	Yes	Morris, William R.	Surgery
No	No	Morrison, Ralph L.	Dentistry
Yes	Yes	Morse, Edward C.	Minor Surgery
Yes	Yes	Moulden, William R.	General Surgery
Yes	Yes	Mourot, Arthur J.	Surgery
Yes	Yes	Mundell, Joseph J.	Obstetrics & Gyn.
Yes	Yes	Murray, Raymond W.	Internal Medicine
No	Yes	Musgrave, George H.	Medicine
Yes	Yes	Myers, Walter K.	Internal Medicine
Yes	Yes	Nathanson, Esther A.	Ob. & Gyn. & Female Urology
Yes	Yes	Neill, Thomas E.	Surgery & Gynecology
Yes	Yes	Nevinser, Julius S.	Orthopedic Surgery
Yes	Yes	Nicklas, Edward W.	Normal Ob. & Medicine
Yes	Yes	Nordlinger, George.	Gyn. & Ob.
Yes	Yes	Notes, Bernard.	Ob. & Gyn.
Yes	Yes	Novick, Joel N.	Ear, Nose & Throat
No	No	Ogus, William I.	Dental & Oral Surgery
Yes	Yes	O'Keeffe, James A.	General Medicine
Yes	Yes	Orr, William J. B.	General Surgery
Yes	Yes	Ottenberg, Gilbert.	Urology
Yes	Yes	Pagan, Albert E.	Ob. & Gyn.
Yes	Yes	Parker, Howard P.	Gyn. & Ob.
Yes	Yes	Pelland, Philip O.	Orthopedic Surgery
Yes	Yes	Pelzman, Ivy A.	Urology
Yes	Yes	Perkins, William R.	Minor Surgery, Normal Ob. & Med.
Yes	Yes	Porton, Stanley P.	General Medicine
Yes	Yes	Preece, Alec A.	Ob. & Gyn.
Yes	Yes	Prentiss, Daniel W.	Minor Surg. Normal Ob. & Med.
Yes	Yes	Preston, John F.	Internal Medicine
Yes	Yes	Price, Walter W.	Normal Ob. & Med.
Yes	Yes	Protas, Maurice.	Internal Medicine
Yes	Yes	Purse, Grace G.	Minor Surg. Normal Ob. & Med.
Yes	Yes	Putzki, Paul S.	Surgery
Yes	Yes	Quick, Ralph A.	Medicine
Yes	Yes	Reed, John A.	Internal Medicine
Yes	Yes	Reeves, William P.	General Surgery
Yes	Yes	Reisinger, John C.	Internal Medicine
Yes	Yes	Repetti, Fred.	General Medicine
Yes	Yes	Reuter, Frederick A.	Urology
Yes	Yes	Richtmeyer, Duano C.	Surgery
Yes	Yes	Richwine, Alfred H.	Med., Minor Surg. & Normal Ob.
Yes	Yes	Richwine, Barton W.	Ob. & Gyn.
Yes	Yes	Riddick, Arch L.	Surgery
No	Yes	Rod, Isadore.	Medicine
Yes	Yes	Rolls, James A.	General Medicine
Yes	Yes	Rossiter, Thomas J.	Gen. Med., & Pediatrics
No	Yes	Rude, Gilbert B.	Med., Ob. & Minor Surgery
Yes	Yes	Rusmiselle, Leslie T.	Normal Ob. & Medicine

Member D.C. Med. Society	Member American Medical Assoc.		
Yes	Yes	Sager, W. Warren	Surgery
Yes	Yes	Sanderson, Fred R	Surgery
Yes	Yes	Sandler, I. Lewis	Dermatology & Syphilology
Yes	Yes	Schoenfeld, Herbert H	Surgery
No	Yes	Shull, E. C	General Med., & Ob.
No	Yes	Schwartzman, Aaron S	General Medicine
Yes	Yes	Schwarzmann, John U	Urology
Yes	Yes	Shearer, Joseph P	Surgery & Gynecology
Yes	Yes	Sheppard, Ernest	Ophthalmology
Yes	Yes	Shugrue, John J	Neuro-Surgery
Yes	Yes	Simpson, Charles A	Dermatology
Yes	Yes	Sims, William B	Internal Medicine
Yes	Yes	Smiler, Nathan N	Surgery
Yes	Yes	Snowden, Edgar	Normal Ob. & Medicine
Yes	Yes	Sparks, W. C	Ear, Nose & Throat
Yes	Yes	Speidel, Francis G	Anesthesia
Yes	Yes	Stanton, William J	Surgery, Gyn. & Ob.
No	Yes	St. Clair, Francis A	Normal Ob., & Medicine
Yes	Yes	Stevenson, Leland E	Med., Normal Ob. & Minor Surg.
No	Yes	Sugar, Samuel J	Gen. Med., Normal Ob. & Minor Surgery
Yes	Yes	Taggart, S. Ross	General Surg., Normal Ob. & Medicine
Yes	Yes	Taylor, Lewis H	Surgery
Yes	Yes	Thomas, William R	Surgery
Yes	Yes	Thompson, J. Lawn	Medicine
Yes	?	Thompson, Millard F	General Medicine
Yes	No	Thompson, Richard K	Dental Surgery
Yes	Yes	Thompson, Thomas C	Urology
Yes	Yes	Tibbetts, Albert P	Ear, Nose & Throat
Yes	Yes	Trible, George B	Otolaryngology
Yes	Yes	Vann, Homer K	Ear, Nose & Throat
Yes	Yes	van Kinsbergen, Maurice	General Medicine
No	Yes	Vedder, Edward B	Tropical Medicine
Yes	Yes	Walker, Allen E	Otolaryngology
Yes	Yes	Warfield, John O., Jr	Surgery
Yes	Yes	Weinstein, David L	Pediatrics
Yes	Yes	Weitzman, Harry S	Surgery
Yes	Yes	Weller, G. Louis, Jr	Internal Medicine
Yes	Yes	White, Charles S	Surgery
Yes	?	Whitson, William E	Medicine
Yes	Yes	Wilkinson, Richard W	Eye, Ear, Nose & Throat
Yes	Yes	Williamson, Fred Y	General Med., & Ob.
Yes	Yes	Williman, Frank L	Internal Medicine
No	?	Young, Albert T	Gynecology & Ob.
Yes	Yes	Young, William G	Urology
Yes	Yes	Zehner, Harry	General Medicine

Additions to Courtesy Staff

No	No	Berenstein, Stanley H	Pediatrics & Minor Surg.
Yes	Yes	Bliss, Charles L	General Medicine
No	Yes	Lachman, Sander E	Pediatrics, including child Psychiatry
Yes	Yes	Sorrell, George R	General Medicine

Member D.C. Med. Society	Member American Medical Assoc.		
No	Yes	Ziegler, Edwin E	Internal Medicine
No	No	Newton, Howard J	Oral Surgery
No	Yes	Pincock, Carolyn S	Pediatrics, & Minor Surg.
Yes	Yes	Scala, Norman P	Ophthalmology
Yes	Yes	Campbell, Elliott M	Surgery
No	Yes	Abramson, Herbert	Gen. Med., & Minor Surgery
Yes	Yes	Lee, Allen E	General Medicine
Yes	Yes	Grass, Edward J	General Plastic Surgery
Yes	Yes	Strine, Howard H	Surgery
Yes	Yes	Tegge, Charles W	Otolaryngology
Yes	Yes	Watts, James W	Neurosurgery
No	Yes	Helfgott, N. J	Medicine
No	Yes	Kaufman, Morton S	Minor Surg., Ob. & Gyn.
Yes	Yes	Avery, Frederick S	Gen. Surg., Normal Ob., Oper. Ob. & Gyn.
Yes	Yes	Baker, May D	General Practice
No	Yes	Forcione, Eugene A	General Medicine
Yes	Yes	Foye, A. Frances	General Medicine
Yes	Yes	Greenlaw, Joseph J	Pediatrics
Yes	Yes	Harnsberger, Charles W	Gastroenterology
Yes	Yes	Hottol, Robert R	General Medicine
No	Yes	Lind, John E	Psychiatry
Yes	Yes	Minor, John	Internal Medicine
Yes	Yes	Nicholson, Margaret M	Pediatrics
Yes	Yes	Nimetz, Aaron	Internal Medicine & Pediatrics
Yes	Yes	Ong, Harry A	Pediatrics
Yes	Yes	Parker, Katherine E	Medicine
No	Yes	Phillips, Benjamin F	Medicine
Yes	Yes	Prosperi, Milton H	Medicine
Yes	Yes	Roman, Frederick O	General Medicine
Yes	Yes	Sexton, Roy L	Internal Medicine
Yes	Yes	Shapiro, Hyman D	Neurology
Yes	Yes	Stevenson, Ralph R	General Medicine
No	Yes	Thornley, Roy A	Internal Medicine
Yes	Yes	Chipman, C. N	Anesthesia
No	Yes	Davidson, James F	Anesthesia
Yes	Yes	Elward, Joseph F	Roentgenology
No	?	Hollister, William	General Surgery
Yes	Yes	Howse, Charles P	G. U. Surgery
Yes	Yes	Hyde, Leroy W	Ophthalmology
Yes	Yes	Larkin, Edward	Orthopedics
Yes	Yes	Sawyer, Leroy L	Otolaryngology
Yes	Yes	Mann, Jesse T	Anesthesia
Yes	Yes	Mason, William B	Otorhinolaryngology
Yes	Yes	Stirling, W. C	Urology
Yes	Yes	Tibbets, Lyman B	Otolaryngology
Yes	Yes	Chase, Morris	General Medicine
No	No	Clayman, David S	General Medicine
Yes	Yes	Fletcher, Harry M	General Med. & Minor Surg.
No	Yes	Litvin, Philip	Medicine
No	Yes	Morgan, Ernest L	Gastroenterology
Yes	Yes	Steinman, Erwin	General Medicine
Yes	Yes	Washington, Daniel B	General Medicine
Yes	Yes	Manchester, Benjamin	Medicine
No	Yes	Thompson, J. Lawn, Jr	Medicine
No	Yes	Brainin, William	Minor Surg., & Normal Ob.
No	Yes	Fusfeld, Cecile L	Medicine
Yes	Yes	O'Donnell, Roger J	Ob. & Gyn.
Yes	Yes	Alpher, Isadore M	Gen. Med. & Surgery
Yes	Yes	Cate, L. Huntley	General Medicine

Member D.C. Med. Society	Member American Medical Assoc.		
Yes	Yes	Deman, Charles J.	Ob. & Gyn.
Yes	Yes	Donnally, Harry H.	Pediatrics & Allergy
Yes	Yes	Dunne, Anna B.	Gyn. & Proctology
Yes	Yes	Ellerson, Edmund M.	Ob. & Gyn.
No	Yes	Glaubach, Nathan	General Medicine
No	Yes	Havell, Robert B.	General Med., Minor Surg. & Normal Ob.
Yes	?	Jaeger, Henry W.	General Medicine
No	Yes	McNutt, Agnes L.	Gen. Med., Normal Ob. & Minor Surg.
Yes	Yes	Mesitis, Fofo	Med., Gyn. & Ob.
Yes	Yes	Pincock, Glen	General Medicine
Yes	Yes	Ramsey, Herbert P.	Ob. & Gyn.
Yes	Yes	Reeves, Clyde P.	Med., Ob. & Gyn.
Yes	Yes	Silvester, Richard L.	Ob. & Gyn.
No	Yes	Sotheron, Elmer	Gen. Med., & Ob.
No	Yes	Thom, Alfred P., 3rd	Internal Medicine
Yes	Yes	Read, Boyd R.	General Medicine
No	Yes	Willison, Eugene E.	Ophthalmology
No	No	Maret, Raymond	Med., Minor Surg. & Normal Ob.
Yes	Yes	Davies, Harry F.	Otolaryngology
Yes	Yes	Atkinson, Walter	Surgery
No	Yes	Engh, Otto A.	Orthopedics
No	Yes	De Vito, Michael P.	Surgery
Yes	Yes	Schwartzbach, Saul	Surgery
Yes	Yes	Gates, Herbert S.	General Medicine
Yes	?	Bailey, William O.	Eye, Ear, Nose & Throat
No	Yes	Ryland, Charles P.	General Medicine
Applications Disapproved for Courtesy Privileges:			
Yes	Yes	Carbo, Ralph J.	
Yes	Yes	Fernald, Clarence J.	
Yes	Yes	Cox, O. C.	
No	Yes	Rosenthal, Jacob S.	
Yes	Yes	Abbe, Truman	

Gov. Ex. 615

The Medical Society of the District of Columbia

1718 M Street, N. W.

Washington

July 29, 1937.

DEAR DOCTOR:

It may have come to your attention that there is an organization or organizations that are interested in gaining medical personnel. Your attention is called to Chapter IX, Article IV, Section 5 of the Constitution, quoted in full.

You are particularly urged to submit to the Compensation, Contract and Industrial Medicine Committee, pursuant

to the Constitution, any or all contracts, written or verbal, under which you may contemplate giving your services.

Very truly yours, C. B. Conklin, M.D., Secretary.

C-e.

The Medical Society of the District of Columbia

1718 M Street

(Telephone: District 3111)

Approved List of Organizations, Groups and Individuals, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof. (Chapter IX, Article IV, Section 5 of the Constitution.)

1. All members of the Medical Society of the District of Columbia.

2. Medical staffs of all hospitals, institutions and clinics, each member of which has been approved by the Medical Society of the District of Columbia.

3. The United States Government Medical Personnel on duty in the District of Columbia, or within 10 miles thereof, i.e., the United States Army, Navy, Public Health Service, and the Veterans' Administration.

4. The Health Officer and attached medical personnel.

5. Membership of the District of Columbia Dental Society.

6. Membership of the Homeopathic Medical Society.

7. Members of the Montgomery County (Md.), Prince Georges County (Md.), Fairfax County (Va.), and Arlington County (Va.) Medical Societies, who reside within 10 miles of the District of Columbia.

8. Members of the Alexandria Medical Society.

9. The following Compensation Clinics:

Operated by

Farragut Medical Clinic, Frank E. Gantz, M.D.

First Aid Station, Arch L. Riddick, M.D.

Harry M. Lewis Clinic, Harry M. Lewis, M.D.

Market Compensation Accident Clinic, M. J. Kossow, M.D.

Northeast Insurance Clinic, G. Henry Rawson, M.D.

Union Market Workmen's Compensation Clinic, Maxwell Hurston, M.D.

Washington Industrial Accident Clinic, Edward Clark Morse, M.D.

Washington Medical Building Workmen's Clinic, Charles S. White, M.D.

10. All medical personnel employed by the Federal or Municipal Governments within the District of Columbia or within 10 miles thereof.

11. Membership of the Medico-Chirurgical Society (colored Medical Society).

12. Membership of the Robert T. Freeman Dental Society (colored Dental Society).

Gov. Ex. 616

The Medical Society of the District of Columbia

1718 M Street, N. W.

Washington

July 29, 1937.

TO THE SUPERINTENDENT:

Pursuant to action of the Executive Committee, held on the evening of July 12, 1937, and in fulfilment of Chapter IX, Article IV, Section 5 of the Constitution, your attention is hereby called to the list of organizations, groups and individuals herewith enclosed. The approved list is on file with the Secretary's Office. The amendment is now in force. Any violation thereof will make a member liable according to the provisions of the Constitution:

Chapter IX, Article IV, Sec. 5:

"No member of the Society shall engage in any professional capacity whatsoever with any organization, group or individual, by whatever name called or however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, which has not been approved by the Society.

"The Executive Committee is authorized and directed to prepare an approved list of organizations, groups and individuals, by whatever name called and however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, and the same shall be kept in the office of the Secretary-Treasurer. Before any such organization, group or individual can be placed on the approved list of the Society, such organization, group or individual, or the member of the Society proposing professional relations therewith, shall submit to the Compen-

sation, Contract and Industrial Medicine Committee such evidence as the Committee or the Society may require showing the character, activities, financial condition and ethical standards of said organization, group or individual, and after considering the same, said committee shall make a report of its investigation and findings to the Executive Committee for such action as it may deem necessary."

Very truly yours, C. B. Conklin, M.D., Secretary.

C-e

Copy

The Medical Society of the District of Columbia

1718 M Street

Washington

Resolution adopted by the Society, in session on the evening of December 1, 1937:

Resolved, That as a matter of educational policy the Medical Society of the District of Columbia strongly recommends that all hospitals engaged in the teaching and training of residents, interns, and nurses, where possible, follow the recommendation of the American Medical Association regarding the constitution of their entire Medical Staffs, namely, that each appointee be a member of the Medical Society of the District of Columbia or a local medical society in this immediate neighborhood and a member of the American Medical Association.

Gov. Ex. 617

Copy

The Medical Society of the District of Columbia

Successor (1911) to the Medical Society of the District of Columbia, Founded September 26, 1817, and the Medical Association of the District of Columbia, Founded January 11, 1833

1718 M Street

Washington

Office of Secretary-Treasurer

December 2, 1937.

Chief of Staff, George Washington University Hospital, 1339 H Street, Northwest, Washington, D. C.

DEAR DOCTOR:

Pursuant to formal action of the Medical Society of the District of Columbia, in session on the evening of December 1, 1937, the attached resolution is sent you.

Very truly yours, C. B. Conklin, M.D., Secretary.

CBC/dw. Encl.

Gov. Ex. 624

1752

Memorandum

Re: Medical Society Affiliations of Staff Members Of Milwaukee Hospitals Approved for Intern Training

Columbia Hospital:

Date of Staff List: 1936.

Physicians Expelled from Society Membership on Staff List: None.

Analysis:

Regular and Associate	
Fellows	73
Members	8
Non-members	4
	85

Evangelical Deaconess Hospital:

Date of Staff List: 10/11/35.

Physicians Expelled from Society Membership on Staff List: E. L. Dallwig.

Analysis:

Active and Associate	
Fellows	46
Members	12
Non-members	10

Milwaukee Hospital, "The Passavant":

Date of Staff List: 10/28/35.

Physicians Expelled from Society Membership on Staff List: None.

Analysis:

Fellows	33
Members	4
Non-members	0

1753

Misericordia Hospital:

Date of Staff List: 10/15/35.

Physicians expelled from Society Membership on Staff List: A. L. Curtin.

Analysis:

Fellows	27
Members	15
Non-members	15

Mount Sinai Hospital:

Date of Staff List: 1/1/36.

Physicians Expelled from Society Membership on Staff List: A. L. Curtin, H. F. Wolters.

Analysis:

Attending, Associate, Adjunct, and Clinic Physicians	
Fellows	67
Members	27
Non-members	18

St. Joseph's Hospital:

Date of Staff List: 10/11/35.
Physicians Expelled from Society Membership on Staff List: G. A. Sullivan.
Analysis:

Regular and Associate	
Fellows	56
Members	13
Non-members	7

St. Luke's Hospital:

Date of Staff List: June 1936.
Physicians Expelled from Society Membership on Staff List: None.

1754

St. Luke's Hospital (continued):

Analysis:

Active	
Fellows	36
Members	14
Non-members	4

St. Mary's Hospital:

Date of Staff List: 11/1/35.
Physicians Expelled from Society Membership on Staff List: None.
Analysis:

Active and Associate	
Fellows	43
Members	11
Non-members	4

MH.
July 30, 1936.

Gov. Ex. 635

1774

To the Staff of Misericordia Hospital, Milwaukee:

Our Hospital may be withdrawn from the list of hospitals approved for intern training by the Council on Medical

Education and Hospitals, one of the apparent reasons being that the staff has not as yet adopted the following resolution of the House of Delegates of the American Medical Association:

"Resolved, That it is the opinion of the House of Delegates of the American Medical Association that physicians on the staff of hospitals approved for intern training by the Council on Medical Education and Hospitals should be limited to members in good standing of their local County Medical Societies and that the House of Delegates requests the Council on Medical Education and Hospitals to take this under advisement."

Insofar as I, as superintendent of the Hospital am authorized by the by-laws to appoint a new staff at the beginning of each fiscal year, it becomes necessary for me to inform you at this time that on September 6, 1937 when the new appointments are made, I will be unable to include any members of the present staff who are not members in good standing of their County Medical Society.

I wish to recommend to the staff at this time, their consideration of an amendment to the by-laws at their annual meeting, whereby Section I of Article II (membership) be changed to read

"The applicant for membership shall be a graduate of a recognized medical school, legally licensed to practice in the State of Wisconsin and a member in good standing in his County Medical Society."

Sister Saint Emile, S.M., Superintendent of Hospital.

May 11, 1937.

Gov. Ex. 636

1776

July 18, 1936.

Sister St. Emile, Supt., Misericordia Hospital, Milwaukee, Wisconsin.

My dear Sister:

It has come to our attention, through correspondence with the Medical Society of Milwaukee County, that certain

physicians have been expelled from that society through participation in an organization known as "Milwaukee Medical Center." It is also reported that certain of these same individuals continue as members of your attending staff with hospital privileges.

May we call your attention to the recent resolution passed by the House of Delegates of the American Medical Association, as follows:

"Resolved, That it is the opinion of the House of Delegates of the American Medical Association that physicians on the staffs of hospitals approved for intern training by the Council on Medical Education and Hospitals should be limited to members in good standing of their local county medical societies and that the House of Delegates requests the Council on Medical Education and Hospitals to take this under advisement."

What possibility, if any exists for observance of the principle laid down in this resolution?

Very truly yours,

WDC:MH.

Gov. Ex. 637

1801

July 18, 1936.

Miss Elizabeth Woolson, R.N., Supt., St. Luke's Hospital, 230 W. Madison Street, Milwaukee, Wisconsin.

My dear Miss Woolson:

It has come to our attention, through correspondence with the Medical Society of Milwaukee County, that certain physicians have been expelled from that society through participation in an organization known as "Milwaukee Medical Center." It is also reported that certain of these same individuals continue as members of your attending staff with hospital privileges.

May we call your attention to the recent resolution passed by the House of Delegates of the American Medical Association, as follows:

"Resolved, That it is the opinion of the House of Delegates of the American Medical Association that physicians on the staffs of hospitals approved for intern training by

the Council on Medical Education and Hospitals should be limited to members in good standing of their local county medical societies and that the House of Delegates requests the Council on Medical Education and Hospitals to take this under advisement."

What possibility, if any, exists for observance of the principle laid down in this resolution?

Very truly yours,

WDC:MH.

Hosp. staff did not receive this letter—so it was retained by Supt.—Ana.

Per delegation 8-17-37.

Gov. Ex. 639

1772

Milwaukee Hospital

"The Passavant"

W. Kilbourn Avenue and N. 22nd Street

Milwaukee, Wis.

Office of Director
Rev. Herm. L. Fritschel, D.D.

November 3, 1936.

Dr. Wm. D. Cutter, Secretary, American Medical Association, 535 North Dearborn Street, Chicago, Illinois.

Re: Certain Physicians Expelled from Milwaukee County Medical Society

DEAR MR. CUTTER:

In reference to your letter of October 27, about relation of Milwaukee Hospital to the expelled physicians by Milwaukee County Medical Society, for unethical practices, allow me to state that all members of the Staff of Milwaukee Hospital, including those to whom the courtesy to use the hospital was extended, are members of good standing in the Milwaukee County Medical Society.

With best wishes and kind personal regards,

Respectfully yours, Herm. L. Fritschel, D.D.

HLF:IQ.

Gov. Ex. 640

1806

St. Luke's Hospital

230 W. Madison Street

Milwaukee, Wis.

November 14, 1936

1936 Nov. 16 AM 11 13.

Council on Medical Education and Hospitals, Nov. 16, 1936

American Medical Association, 535 No. Dearborn Street, Chicago, Illinois

GENTLEMEN:

Inclosed please find the names of our Active Staff Physicians. All are members of the Milwaukee County Medical Society.

We take this opportunity to report that R. D. Thompson, M.D. left our hospital the last of October to take up private practice, and we now have E. R. Krumbiegel, M.D. as full time resident since October 30.

Yours very truly, St. Lukes Hospital, Millie A. Jacobson, Superintendent.

MAJ:SMB.
Enclosure.

Gov. Ex. 641

Copy

American Medical Association
Chicago

February 17, 1940.

Mr. Ernest G. McKay, Supt., Tampa Municipal Hospital, Tampa, Florida

MY DEAR MR. MCKAY:

The Council on Medical Education and Hospitals, meeting on February 11, voted to withdraw approval for the

training of interns at the Tampa Municipal Hospital. As a result of the changes which have recently been made in the organization of the medical staff, the Council is convinced that the hospital is no longer capable of fulfilling the requirements fixed by this Council and ratified by our House of Delegates.

Very truly yours, William D. Cutter.

WDC:KH.

Gov. Ex. 642

1523

March 28, 1938.

Dr. C. W. Knudson, President, King County Medical Society, Medical and Dental Building, Seattle, Washington

DEAR DOCTOR KNUDSON:

We appreciate very much your continued interest in the work of the Council and your offer to assist us in obtaining full compliance with the resolution of the House of Delegates pertaining to staff appointments in hospitals approved for intern training. We are sending under separate cover the staff lists recently submitted by approved hospitals in Seattle and shall be glad to receive your notification of the number of staff physicians who are not members of the county medical society. Some of the hospitals failed to submit on the last information blank the names of physicians having staff privileges. We are writing for up-to-date staff lists and shall send them on to you at the earliest opportunity.

The information regarding county medical society membership will be particularly useful to us at this time since we are now contemplating a survey of the Seattle hospitals shortly after the American Medical Association convention in San Francisco. So far, it has not been necessary to take drastic action against any hospital on the basis of the membership resolution of the House of Delegates since prompt results have usually been obtained by less formidable action on the part of the Council.

We feel certain that the cooperation of the Kings County Medical Society will be of great help to the Council in this matter.

Very truly yours, —— ——.

WDC:MW.
FHA.

Gov. Ex. 643

American Medical Association

535 North Dearborn Street

Chicago

Council on Medical Education and Hospitals

Members

Ray Lyman Wilbur, M.D., Chairman,	Stanford Univ.
J. H. Musser, M.D.	New Orleans
Fred Moore, M.D.	Des Moines
Reginald Fitz, M.D.	Boston
Fred W. Rankin, M.D.	Lexington, Ky.
Charles Gordon Heyd, M.D.	New York
Frank H. Lahey, M.D.	Boston
William D. Cutter, M.D., Secretary	Chicago

Staff

Homer F. Sanger; Oswald N. Andersen, M.D.; Fritjof H. Arestad, M.D.; Hamilton H. Anderson, M.D. Stuart P. Cromer, M.D.

July 22, 1938.

Dr. D. L. Sprinkle, Supt., Tampa Municipal Hospital, Tampa, Florida

DEAR DOCTOR SPRINKLE:

Thank you for your letter of June 29 in which you invite the Council to send a representative to assist you in the solution of certain problems now confronting the Tampa Municipal Hospital.

It is unlikely that we can release one of our staff men now or in the near future since the field work is necessarily planned well in advance. You may be assured, however, that the Council desires to be kept informed as to what developments may take place. If later it seems desirable, a visit may be arranged.

The Council is well aware of the situation existing in Tampa between the Hillsborough County Medical Society and the doctors serving the Latin population through the fraternal clubs on contract bases. The position of the hos-

pital has also been under the purview of the Council. A reasonable amount of time has elapsed during which a solution might have been effected. It appears now that a more definite stand must be taken.

You realize that the Council on Medical Education and Hospitals is carrying out the edict of the House of Delegates of the American Medical Association which is here reiterated:

"Resolved, That it is the opinion of the House of Delegates of the American Medical Association that physicians on the staffs of hospitals approved for intern training by the Council on Medical Education and Hospitals should be limited to members in good standing of their local county medical societies and that the House of Delegates requests the Council on Medical Education and Hospitals to take this under advisement."

I do not see that it is your problem or the problem of the American Medical Association to decide whether these clubs are essential under present-day economic conditions or may be dispensed with. The principle involved is one of unethical contract practice by members of your hospital staff. This is in conflict with the resolution as well as with your own staff constitution and by-laws.

No action for removal of the hospital from the approved list will be taken immediately and I believe the Council can see its way clear to carry the name of the Tampa Municipal Hospital in the forthcoming list to be printed in the Educational Number of The Journal A. M. A., August 27, 1938. If a satisfactory settlement cannot be made during the current year, the recognition of the hospital by the Council may be jeopardized.

Very truly yours, William D. Cutter.

WDC:MW.

Gov. Ex. 644

American Medical Association
535 North Dearborn Street
Chicago

Council on Medical Education and Hospitals

Members

Ray Lyman Wilbur, M. D., Chairman,	Stanford Univ.
J. H. Musser, M. D.	New Orleans
Fred Moore, M. D.	Des Moines
Reginald Fitz, M. D.	Boston
Fred W. Rankin, M. D.	Lexington, Ky.
Charles Gordon Heyd, M. D.	New York
Frank H. Lahey, M. D.	Boston
William D. Cutter, M. D., Secretary	Chicago

Staff: Homer F. Sanger, Oswald N. Andersen, Fritjof H. Arestad, Hamilton H. Anderson, Stuart P. Cromer, M.D.

July 23, 1938.

Dr. G. C. Rankin, 518 Citizens Bank Building, Tampa, Florida

DEAR DOCTOR RANKIN:

I have just received your letter of July 18 and I wish to thank you for inviting us to send a member of the Council's staff to help you in dealing with the problems confronting the Tampa Municipal Hospital. I regret that we cannot release a man at present and probably not in the near future. If it seems expedient a little later, it may be arranged.

It may be of interest to you to know that the superintendent of the hospital, Dr. Sprinkle, has sent a similar request. The Council, as you know, has observed for several years the developments in Tampa with regard to the clubs providing medical care for the Latin population. It is well aware of the attitude of the Hillsborough County Medical Society and its consistent efforts in behalf of the organized medical profession.

We have restated to Dr. Sprinkle that the Council on Medical Education and Hospitals is carrying out the resolu-

tion adopted by the House of Delegates of the American Medical Association with which you are familiar, that is:

"Resolved, That it is the opinion of the House of Delegates of the American Medical Association that physicians on the staffs of hospitals approved for intern training by the Council on Medical Education and Hospitals should be limited to members in good standing of their local county medical societies and that the House of Delegates requests the Council on Medical Education and Hospitals to take this under advisement."

The Council is in a position to carry the name of the Tampa Municipal Hospital on the approved list which will be printed in the Educational Number of The Journal A. M. A., August 27, 1938, but if a satisfactory settlement cannot be reached during the current year, it may become necessary for the staff to submit a recommendation that the approval be withdrawn from this institution.

We would appreciate having a report from you from time to time as to just what transpires. Thank you for your interest in this matter.

Very truly yours, William D. Cutter.

WDC:MW.

Gov. Ex. 645

1936 Oct 29 PM 2 32

1768

Evangelical Deaconess Hospital

1821 W. Wisconsin Avenue

Telephone West 6330

Milwaukee, Wis., October 28, 1936.

William D. Cutler, M. D., American Medical Association, 535 North Dearborn St., Chicago, Illinois

DEAR DOCTOR CUTLER:

The physicians recently expelled from the Milwaukee County Medical Society were not connected with our hospital.

Physicians who are not members of the Milwaukee County Medical Society are not accepted as members on our staff.

Yours truly, Ev. Deaconess Hospital, Rev. Paul Wendt, Superintendent.

PW:E.

Gov. Ex. 646

DR. CUTTER:

In April and May 1936, the Medical Society of Milwaukee County tried five of its members on the charge of running the Milwaukee Medical Center, an unethical clinic, and expelled them from the Society. These men were:

A. L. Curtin
H. C. Dallwig
J. E. Rueth
G. A. Sullivan
H. F. Wolters.

They appealed to the Council of the Wisconsin State Medical Society which handed down a decision on September 8, 1936, confirming the order expelling the appellants from membership.

On July 18, 1936, we wrote to the hospitals of Milwaukee to find out whether any of these men were on their staffs. Follow-up letters were sent October 27.

Five of the hospitals replied that the expelled members were not in any way connected with their hospitals. These were:

Evangelical Deaconess Hospital
Columbia Hospital
Milwaukee Hospital
St. Luke's Hospital
St. Mary's Hospital.

Two reported that the expelled members had been required to resign:

Misericoria Hospital
St. Joseph's Hospital.

One hospital reported that action was being held in abeyance for fear of legal complications "until this matter

is adjudicated." This was Mount Sinai Hospital.

HFS-MM.
1-8-37.

Gov. Ex. 647

Copy.

State Medical Society of Wisconsin
Madison

1757

In the Matter of

A. L. Curtin, M.D.
H. C. Dallwig, M.D.
J. E. Rueth, M.D.
Gerald A. Sullivan, M.D.
H. F. Wolters, M.D.

Appellants

This matter involves appeals to this Council by the above-named members of the Medical Society of Milwaukee County and of the State Medical Society of Wisconsin from decisions of the Board of Directors of the Medical Society of Milwaukee County ordering the expulsion from membership in that society of each of the appellants.

A hearing on these appeals was held by the Council on June 27, 1936. The appeal brought before this body the record of the proceedings before the Board of Directors of the Milwaukee Society, such record consisting of a stenotype transcript of the proceedings and testimony there taken, together with original exhibits. A true copy of the transcript was furnished each member of the Council. Appellants were represented by counsel, Gerald P. Hayes, Esq., of Milwaukee, who presented their cause by printed brief and oral argument.

Appellants' contentions on appeal were based upon the record with one exception—that being to the effect that this body was disqualified as an appellate body by reason of the fact that the State Society retained counsel to render assistance to the Board of Directors of the Milwaukee Society. There is incorporated in this decision, by reference, the

statement made by Mr. Crownhart, on June 27, 1936, in regard to this matter and in explanation of why counsel was retained. It is sufficient answer to appellants' contention to state that employment of counsel is in the routine duty of the Secretary, a duty concerning which the Council neither participates nor has knowledge. The Council, and each individual member, had in no manner participated in the proceedings before the Board of Directors. For such reasons, this body must deny the validity of appellants' contention in this respect.

It is the judgment of this body that the record of proceedings and exhibits discloses facts sufficient to sustain the decision of the Board and Directors of the Medical Society of Milwaukee County in this matter. The record further discloses strict compliance with the procedure required.

This Council therefore affirms the order expelling appellants from membership.

Gov. Ex. 648

1762

Memorandum

DR. CUTTER:

The men who were declared unethical by the Milwaukee County Medical Society for their connection with the Milwaukee Medical Center, have now appealed to the Judicial Council. The appeal is to be heard at the Atlantic City meeting in June.

Dr. Andersen is now in Milwaukee and will call you by phone on Tuesday or Wednesday to report anything that he may learn from officials of the Milwaukee County Medical Society and to ascertain whether you advise his making any contact with the hospital while he is in Milwaukee.

H. F. S. J.

MM.
3-8-37.

Gov. Ex. 649

1763

November 24, 1937.

Dr. Louis M. Warfield, 425 E. Wisconsin Avenue, Milwaukee, Wisconsin.

DEAR DOCTOR WARFIELD:

Most of the approved internship hospitals in Milwaukee have expressed their intention to limit privileges to physicians who are in good standing with the Milwaukee County Medical Society. In one instance a decision awaits final disposition by the Judicial Council of the American Medical Association.

Assuming therefore that such a regulation is incorporated in the staff by-laws of this fraction of the hospitals, non-members of the County Society would naturally be expected to hospitalize their patients in those institutions in Milwaukee otherwise accredited but not engaged in intern instruction along approved lines.

Very truly yours,"

WDC:MH.
CMP.

Gov. Ex. 650

1775

Copy of Letter Sent to Doctors Who do Not Belong to the Local County Medical Society

May 17, 1937.

DEAR DOCTOR:

I have recently received from the Committee on Medical Education and Hospitals, new regulations governing the requirements of staff membership of all recognized Hospitals.

The foremost requirement in this respect is membership in the local County Medical Society. This requirement is mandatory of all staff members—if the hospital is to maintain its rating and be eligible for intern training.

The by-laws of Miserlicordia Hospital (Milwaukee) require reappointment of staff members at the beginning of

the fiscal year, which is Sept. 6, 1937. It is my imperative duty to inform you that I will make the new appointments in strict conformity with the A. M. A. regulations, and I earnestly request you to conform to the requirements as stated above.

Will you kindly reply to this request, stating your intentions, at your earliest convenience?

Very truly yours, —— ——; Sister St. Emile, S. M., Superintendent of Hospital.

Gov. Ex. 651.

1764

Louis M. Warfield, M. D.,

425 E. Wisconsin Ave.,

Milwaukee, Wis.

1937 NOV 22 AM 10 50. Council on Medical Education, Nov. 22, 1937, and Hospitals

November 20, 1937.

American Medical Association, 535 N. Dearborn, Chicago, Illinois.

Committee on Hospital Standardization

GENTLEMEN:

In view of certain questions which have arisen recently in the Milwaukee County Medical Society, I am writing to know what the Committee's action would be in the following case.

Suppose I felt that I should like to resign for various reasons from the Milwaukee County Medical Society would that automatically sever my connections with certain hospital staff appointments which I have, or if I did not voluntarily sever my connection would the hospitals be compelled to deny to me the use of the hospitals because I was no longer a member of the County Society?

I should appreciate an opinion from you.

Very truly yours, Louis M. Warfield, M. D.

Gov. Ex. 652

1758

Feb., 1937

October 22, 1936.

MR. SANGER:

My reaction on the Milwaukee situation is as follows:

Would it not be best as a first step to determine whether any of the expelled members of the Milwaukee County Medical Society are at present connected in any capacity with approved internship hospitals, without incorporating any definite threat?

It has been my contention that if any action is taken against these hospitals it be not on the basis of membership in the county society but on the basis of unethical practitioners, a violation of the "Essentials in a Registered Hospital."

My reason is that if we invoke the resolution of the House of Delegates, and if we treated all Milwaukee hospitals alike, there would only be one approved internship hospital left in the city, namely, The Passavant.

C. M. P.

MH.

Gov. Ex. 653

1802

October 8, 1936.

Sister Mary Paschal, R. N., Supt.
St. Joseph's Hospital
Milwaukee, Wisconsin

MY DEAR SISTER:

The enclosure is a copy of Dr. F. H. Arestad's report on the present organization of your teaching program for interns. Kindly submit this statement to your intern committee and other staff members interested in and responsible for the training which your house officers receive.

The satisfactory character of statements made about the internship program indicates that full approval continues

to be merited. We are somewhat more dubious about continuing the approval for a residency in medicine since, in our opinion, the present occupant is not entirely on an educational basis in view of his special administrative duties and the length of time he has served.

If it seems desirable to supplement this report in any way, please communicate with us. The next meeting of the Council for discussion of approved hospitals takes place in February.

May we also call your attention to a recent resolution passed by the House of Delegates of the American Medical Association:

RESOLVED, That it is the opinion of the House of Delegates of the American Medical Association that physicians on the staffs of hospitals approved for intern training by the Council on Medical Education and Hospitals should be limited to members in good standing of their local county medical societies and that the House of Delegates requests the Council on Medical Education and Hospitals to take this under advisement.

What possibility, if any, exists for observance of the principle laid down in this resolution?

Very truly yours,

WDC:MH
CMP

Gov. Ex. 654

1773

December 11, 1936.

Sister St. Emile, Supt.
Misericordia Hospital
Milwaukee, Wisconsin

MY DEAR SISTER:

We acknowledge with thanks your letter of December 5. It is naturally very pleasing for us to learn that you have found the Council's basis for registration of hospitals a desirable system under which to operate.

We shall call this fact to the attention of the Council next February, also that you still propose to train interns and that you wish to be continued as approved for this type of training in the Council's publications.

Cordially yours,

WDC:DE
CMP

Gov. Ex. 655

1767

October 27, 1936.

Rev. Paul Wendt, Supt.
Evangelical Deaconess Hospital
Milwaukee, Wisconsin

DEAR REVEREND WENDT:

We have recently been notified that certain physicians have been expelled from the Milwakuee County Medical Society for unethical practices and that the action of this constituency has been upheld by the Council of the Wisconsin State Medical Society.

How does this action affect Evangelical Deaconess Hospital? Are all members on your staff in good standing with the Milwaukee County Medical Society or eligible for membership in that society?

Very truly yours,

WDC:MH
CMP

Gov. Ex. 656

1801A

October 26, 1936.

Miss Lillie A. Jacobson, Supt.
St. Luke's Hospital
Milwaukee, Wisconsin

MY DEAR MISS JACOBSON:

This is in continuation of our previous correspondence about qualifications for staff membership in St. Luke's

Hospital. We have been informed that the Council of the Wisconsin State Medical Society has upheld the action of the Milwaukee County Medical Society in expelling certain physicians for unethical behavior.

How does this action affect St. Luke's Hospital? Are all members on your staff in good standing with the Milwaukee County Medical Society or eligible for membership in that society?

Very truly yours,

WDC:MH
CMP

Gov. Ex. 47

The Medical Society of the District of Columbia

Successor (1911) to the Medical Society of the District of Columbia, Founded September 26, 1817, and the Medical Association of the District of Columbia, Founded January 11, 1833

1718 M Street, N. W., Washington

Committee: Compensation, Contract and Industrial Medicine.

December 10, 1937.

The Executive Committee, The Medical Society of the District of Columbia, Washington, D. C.

GENTLEMEN:

On November 22, 1937, our Committee addressed a communication to you advising you of our investigation concerning Dr. Allan E. Lee and Dr. M. Scandiffio and recommended that they be expelled as members of the Society because of their violation of Section 1, Article III, Chapter 9 and Section 5, Article IV, Section 9 of the Constitution of the Medical Society of the District of Columbia.

Our Committee is today in receipt of a letter from Dr. Allan E. Lee, advising us that he has resigned from the staff of Group Health Association. Inasmuch as our recommendation respecting Dr. Lee was based upon the fact that he had entered into a contract with Group Health Association

and that contract has now been terminated by him, we feel that no further action should be taken with respect to Dr. Lee.

We, therefore, respectfully request that the charges and recommendations against Dr. Lee, embodied in our communication of November 22, 1937, be withdrawn and that appropriate action be taken by your committee thereon.

Respectfully submitted, R. Arthur Hooe, M. D., Chairman. C. C. & I. M. Committee.

H-e.

Gov. Ex. 62

Copy.

Compensation, Contract and Industrial Medicine Committee.

November 2, 1937.

Dr. Mario Scandiffio, 1954 Columbia Road, N. W., Washington, D. C.

DEAR DOCTOR SCANDIFFIO:

You are hereby directed to appear before the Compensation, Contract and Industrial Medicine Committee, which will be in session on Thursday evening, November 4, 1937, at 8 P. M., in the Medical Society Building, 1718 M Street, N. W.

Very truly yours, R. Arthur Hooe, M. D., Chairman

H-e.

Gov. Ex. 63

Copy

1824 Massachusetts Avenue, N. W.

November 18, 1937.

Dr. Mario Scandiffio, 1954 Columbia Road, N. W., Washington, D. C.

DEAR DOCTOR SCANDIFFIO:

I acknowledge your letter of November 11th, in which you state you desire to withdraw your resignation, tendered

by you on October 29, 1937, as a member of the District of Columbia Medical Society.

Inasmuch as your resignation has not been acted upon by the Society, I am returning it to you. In doing so I wish you to understand that my action in returning the resignation to you, unacted upon, is in nowise to be considered as passing upon the motives which actuated you in tendering your resignation, as stated by you, or its withdrawal or your continuance as a member of the Society.

Very truly yours, Thomas E. Neill, M. D., President.

N-e.
Encl.

Gov. Ex. 64

M. Scandiffio, M. D.

1954 Columbia Road
Potomac 0133

3725 Jenifer Street N.W.
Cleveland 6272

November 11, 1937.

Dr. Thomas E. Neill, President District of Columbia Medical Society, Washington, D. C.

DEAR DR. NEILL:

On October 31, 1937, I tendered my resignation as a member of the District of Columbia Medical Society. I did so with considerable reluctance and only because of my desire to maintain my professional dignity; since I had received, from unofficial sources, information which led me to believe that unfavorable action would be taken against me by the Society because of my affiliation with the Group Health Association, Inc.

My acceptance of the opportunity to identify myself with this organization was made only after the most careful consideration on my part.

I have been reliably informed that no action has been taken on my resignation. Relying upon the broadminded and well considered judgment of the officers and members of the District Medical Society, I now wish to withdraw my resignation and trust that my membership in the Society will be continued.

With very sincere regards, I am

Yours very truly, M. Scandiffio, M. D.

MS:a.

Gov. Ex. 67

M. Scandiffio, M. D.

1954 Columbia Road
Potomac 0133

3725 Jenifer Street N.W.
Cleveland 6872

November 19, 1937.

Dr. R. Arthur Hooe, Chairman, C. C. & I. M. Committee, The Medical Society of the District of Columbia, Washington, D. C.

Dear Doctor Hooe:

In response to your letter of the 10th instant, wherein I have been charged by your Committee with having violated the provisions of Sections 1 & 2 of Article III of Chapter IX and Section 5 of Article IV of Chapter IX of the Constitution of the Society, you are advised as follows:

1. Your letter or notice of November 4, 1937, was disregarded because of the fact that, prior to that date, I had sent to the Society my resignation from membership; consequently I considered further response unnecessary.

2. Since that time, however, I have withdrawn my said resignation, and, considering myself in good standing in the Society, I have intended and do intend to comply fully with the rules of the body. No formal contract has been entered into with the Group Health Association, but when the terms of the contract are finally agreed upon and reduced to writing, I fully intend to submit same for approval under the rules of the Medical Society.

While it is not my thought that I have, either in letter or spirit, violated any of the rules of the Society, and believing that charges thereof are premature, I hereby request a full and complete hearing, in accordance with your letter of November 10th, on the charges made, to the end that I may have ample opportunity, in person and by counsel, to defend against all charges so made. It is my request that said hearing be fixed at a date not earlier than fifteen (15) days hence in order that ample opportunity may be had for a full and complete presentation of the matter.

Respectfully, M. Scandiffio, M. D.

Gov. Ex. 68

The Medical Society of the District of Columbia

Successor (1911) to the Medical Society of the District of Columbia, Founded September 26, 1817, and the Medical Association of the District of Columbia, Founded January 11, 1833

1718 M Street, N. W., Washington

Committee: Compensation, Contract and Industrial Medicine.

November 22, 1937.

Dr. Mario Scandiffio, 1954 Columbia Road, N. W., Washington, D. C.

DEAR DOCTOR SCANDIFFIO:

In acknowledgment of your letter of November 19, 1937, may I say that a report, in the entire matter, is being forwarded to the Executive Committee. Further reply to your communication will doubtless follow within a few days from the chairman of that body.

Very truly yours, R. Arthur Hooe, M. D., Chairman, C. C. & I. M. Committee.

H-e.

Gov. Ex. 69

The Medical Society of the District of Columbia

Successor (1911) to the Medical Society of the District of Columbia, Founded September 26, 1817, and the Medical Association of the District of Columbia, Founded January 11, 1833

1718 M Street, N. W., Washington

Committee: Executive.

November 24, 1937.

Dr. Mario Scandiffio, 1954 Columbia Road, N. W., Washington, D. C.

DEAR DOCTOR SCANDIFFIO:

In reply to your letter of November 19, 1937, requesting a time for hearing "not earlier than 15 days after the above

date," I am informing you that December 6, 1937, at 8 P. M., is the date and hour fixed when we will expect you to appear before the Executive Committee of the Medical Society of the District of Columbia for hearing, at the Medical Society Building, 1718 M Street, N. W. You, of course, know that you are entitled to be represented by counsel.

Very truly yours, William Mercer Sprigg, M. D., Chairman.

S-e.

Gov. Ex. 70

December 3, 1937.

R. Arthur Hooe, M. D., Chairman, C. C. & I. M. Committee, The Medical Society of the District of Columbia, Washington, D. C.

DEAR DR. HOOE:

Enclosed herewith is a copy of a written agreement to be executed hereafter by and between myself and Group Health Association, Incorporated, of Washington, D. C. The original contract has not been executed by the parties thereto.

I am forwarding a copy of said proposed contract in accordance with the constitution and by-laws of the Medical Society of the District of Columbia, to you as Chairman of the Committee on Compensation, Contract and Industrial Medicine for the consideration and approval of said proposed contract by said Committee. Please submit the proposed contract to said Committee and notify me when the approval of said Committee thereto is had and obtained.

I am informed by the Group Health Association that it will be only too glad to submit to your Committee any information which your Committee might feel necessary in consideration of said contract, explaining the purpose, objects and accomplishments of said Association.

Very truly yours, M. Scandiffio, M. D.

MS.ER.

Gov. Ex. 180

(Read R. page 892.)

The Medical Society of the District of Columbia

Successor (1911) to the Medical Society of the District of Columbia, Founded September 26, 1817, and the Medical Association of the District of Columbia, Founded January 11, 1833

1718 M Street, Washington

Office of Secretary-Treasurer.

July 17, 1937.

Dr. William C. Woodward, Director, Bureau of Legal Medicine & Legislation, American Medical Association, Chicago, Illinois.

DEAR DR. WOODWARD:

In connection with the recent meeting that was held on the evening of July 14, 1937, with the Subcommittee of the Executive Committee, I would ask, if at all possible, that you send a photostatic copy of the Articles of Incorporation of the Group Health Association, Inc., and such other material as was presented that evening which is pertinent and should be in our files. Thanking you, I am

Very truly yours, C. B. Conklin, M. D., Secretary.

C-e.

Sent material to Dr. McGovern 7/19.

Gov. Ex. 295A

Copy

[Stamp:] American Medical Association. File C-6:2-851. Cross Ref. —.

Dr. Leland

1870 Wyoming Avenue, Washington, D. C.

March 27, 1937.

MY DEAR CUTTER:

The facts below just came to my knowledge and I am going to drop them on your desk. It may be old stuff to you people around headquarters.

The early part of the week a couple of men from the Home Owners' Loan Corporation (H.O.L.C.) visited the Surgeon General of the Army to say that they wanted to obtain the services of a doctor to look out for the health of their personnel, which incidently is quite large. After the consultation, the Surgeon General asked Colonel Glenn Jones, a retired medical officer, to visit these people. After this visit which lasted for a period of two or three hours, Jones telephoned to the Surgeon General to the effect that this was nothing but an entering wedge to the establishment of state medicine and so far as he could make out the Twentieth Century Finance Corporation of New York City was going to pay the expenses of this so-called medical care for the personnel of the H.O.L.C. Needless to say, Jones and the Surgeon General are dropping it like a hot cake.

Just treat this information as though it blew in your window as I don't want to be the person to embarrass the Surgeon General if there should be any embarrassment. Some of the prominent doctors in Washington are going to be wised up.

With best wishes,

Faithfully yours, (Signed) M. W. Ireland.

Gov. Ex. 298

Providence.

Questionnaire

1. What communication or inquiry has your hospital had from Group Health Association, Inc.?

Request to accept members of their group as patients, and surgical privileges for Dr. Raymond E. Selders.

2. What reply has your hospital made to Group Health Association, Inc.?

Patients acceptable under rules of Hospital, Application of Dr. Selders submitted to Surgical Board for action.

3. Which, if any of the following Doctors are now members of your medical staff in any capacity of have privileges to practice in your hospital? None.

Dr. Henry Rolf Brown
Dr. Allan E. Lee
Dr. Mario Scandiffio

Dr. R. Stephen Hulburt
Dr. Raymond E. Selders
Dr. Edmond D. Wells

4. Is your hospital in sympathy with the policies of The Medical Soc. of D. C.?
Yes.

5. Is the entire medical staff of your hospital reappointed annually?
Yes.

6. Are appointments to the medical staff of your hospital approved by The Medical Staff?
Yes.

7. What governing body of your hospital finally makes appointments to the Medical Staff?
The Executive Staff.

8. Does your hospital require membership in the Medical Soc. of D. C. as a qualification for appointments *ot* it's Medical Staff?
Yes.

9. What percentage of the entire Medical Staff of your hospital are members of the Medical Society of D. C.?
All are members or applications pending before Society, except one.

10. Does your hospital require membership in the A.M.A. as a qualification for appointment to it's Medical Staff?
Yes.

11. What percentage of the entire Medical Staff of your hospital are members of the A.M.A.?
Including application before Medical Society, 100%.

12. Is your hospital a beneficiary of Community Chest Funds?
Yes.

13. Will you kindly make any other inquiry that you think might be pertinent at this time?

End

Gov. Ex. 441A

Dr. J. Russell Verbrycke, Jr.

Washington

The Farragut Medical Bldg.

May 29, 1937.

Air Mail Spec. Del.

Dr. Wm. C. Woodward, % American Medical Association, 535 North Dearborn St., Chicago, Ill.

DEAR DR. WOODWARD:

I am writing this semi-officially, as chairman of the Economic Committee of the District of Columbia Medical Society to you, as chairman of the Legislative Council of the A. M. A. We are faced with a new problem which would seem to be more far-reaching than a purely local difficulty. Our immediate concern is local but two factors make it national a concern.

The Home Owners Loan Corporation has organized a Cooperative undertaking called Group Health Association, Inc. They propose to have their own set-up for medical care of themselves and families with full time personnel. A Doctor Brown, formerly of the Veterans Bureau, has been appointed medical director with a reputed salary of $8,000.00. He is at present trying to organize a staff.

The Home Owners Loan Corporation has about 2,000 employees here and a number of regional offices through the country. This is not a great deal in itself but we are informed that this undertaking is financed by a government loan, that the President has given his approbation and is so interested in it that if successful he plans to recommend similar organizations through all the Departments.

You, knowing conditions in Washington, will realize that if this movement should spread to the ultimate, the private practice of medicine would be practically destroyed and it is conceivable that the experiment started here would spread through the entire country as it is entirely in line with what the President is said to want.

We feel that two of the factors mentioned above bring this problem directly to the door of the A. M. A. I am asking if you can come here to confer with us and advise us as to best methods of approach. Coming as close to the meet-

ing at Atlantic City it seems as if the present were a very opportune time.

With kindest regards, I am

Sincerely yours, J. Russell Verbrycke, Jr.

JRV/m.

Gov. Ex. 442-A

The Medical Society of the District of Columbia

Successor (1911) to the Medical Society of the District of Columbia, Founded September, 26, 1817, and the Medical Association of the District of Columbia, Founded January 11, 1833.

1718 M Street, Washington

Office of Secretary-Treasurer

December 2, 1937.

Chief of Staff, Episcopal Eye, Ear & Throat Hospital, 1147 Fifteenth Street, Northwest, Washington, D. C.

DEAR DOCTOR:

Pursuant to formal action of the Medical Society of the District of Columbia, in session on the evening of December 1, 1937, the attached resolution is sent you.

Very truly yours, C. B. Conklin, M. D., Secretary.

CBC/dw
Encl.

The Medical Society of the District of Columbia
1718 M Street, Washington

Resolution adopted by the Society, in session on the evening of December 1, 1937:

Resolved, That as a matter of educational policy the Medical Society of the District of Columbia strongly recommends that all hospitals engaged in the teaching and training of residents, interns, and nurses, where possible, follow the recommendation of the American Medical Association regarding the constitution of their entire Medical Staffs, namely, that each appointee be a member of the Medical Society of the District of Columbia or a local medical society in this immediate neighborhood and a member of the American Medical Association.

Gov. Ex. 451-A

National Homeopathic Hospital

Washington, D. C.

Executive Staff

Dr. W. P. Baker
Dr. J. H. Branson
Dr. Tomas Cajigas
Dr. J. B. G. Custis
Dr. J. F. Davidson
D. J. F. Elward
Dr. Bernard Notes
Dr. E. F. Sappington
Dr. J. P. Shearer
Dr. W. C. Stirling
Dr. C. F. Warner

Honorary Staff

Dr. Mary Brosius
Dr. I. W. Dennison
Dr. Mary Holmes
Dr. A. L. Staveley
Dr. L. B. Swormstedt

Consulting Staff

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Dr. Preston Haynes
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Dr. J. B. Jacobs
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Dr. J. H. Lyons
Dr. P. A. McLendon
Dr. J. E. Mitchell
Dr. W. A. Morgan
Dr. W. G. Morgan
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Dr. J. W. Peabody
Dr. P. O. Pelland
Dr. Sterling Ruffin
Dr. F. C. Schreiber
Dr. R. L. Sexton
Dr. J. J. Shugrue
Dr. Prentiss Wilson
Dr. W. M. Yater

National Homeopathic Hospital

Washington, D. C.

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Dr. Victor Alfaro
Dr. C. W. Allen
Dr. I. M. Alpher
Dr. W. K. Angevine
Dr. Guy Arnold
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Dr. W. W. Chase
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Dr. Jack Conner
Dr. P. S. Constantinople
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Dr. P. A. Cornet
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Dr. Edmund Horgan
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Dr. H. A. Hornthal
Dr. F. S. Horvath
Dr. R. R. Hottell
Dr. J. M. Howe
Dr. W. W. Hollister
Dr. C. W. Hyde
Dr. LeRoy Hyde
Dr. Ruth Jackson
Dr. R. J. Janson
Dr. B. R. Jarman
Dr. W. D. Jarman
Dr. Don Johnson
Dr. S. Katzman
Dr. H. W. Kearny
Dr. J. T. Kelly
Dr. Adam Kemble
Dr. A. E. King
Dr. H. C. King
Dr. E. Krause
Dr. W. E. Krechting
Dr. J. Kreiselman
Dr. J. J. Krick
Dr. B. J. Lafsky
Dr. W. J. Lally
Dr. O. Lavine
Dr. R. M. LeComte
Dr. A. E. Lee
Dr. L. P. Levitt
Dr. W. E. Long
Dr. H. C. Mcatee
Dr. E. B. Macon
Dr. S. T. Maloney
Dr. N. A. Mandelos
Dr. G. H. Mankin
Dr. J. T. Mann
Dr. E. H. Markwood
Dr. A. E. Marland
Dr. F. X. McGovern
Dr. C. E. McNamara
Dr. G. H. McLain
Dr. J. H. McLeod
Dr. Arnold McNitt
Dr. H. J. R. McNitt
Dr. R. J. McNulty
Dr. S. V. Meade
Dr. W. G. Meimam
Dr. W. C. Meloy
Dr. W. A. Mess
Dr. Terrell Moody
Dr. R. E. Moran

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Dr. W. R. Moulden
Dr. C. J. Murphy
Dr. R. W. Murry
Dr. B. O. Myers
Dr. M. Nicholson
Dr. Roy Nicholson
Dr. E. W. Nicklas
Dr. Roger O'Donnell
Dr. J. M. Orem
Dr. W. J. B. Orr
Dr. F. B. Pedrick
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Dr. E. M. Pickford
Dr. S. P. Porton
Dr. W. A. Price
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Dr. P. S. Putzki
Dr. J. C. Pyles
Dr. E. E. Quayle
Dr. T. H. Quill
Dr. G. H. Rawson
Dr. B. R. Read
Dr. C. P. Reaves
Dr. D. C. Richtmyer
Dr. A. L. Riddick
Dr. E. E. Roberts
Dr. J. A. Rolls
Dr. T. J. Rossiter
Dr. A. J. Rule
Dr. W. W. Sager
Dr. H. H. Schoenfeld
Dr. F. B. Schultz
Dr. S. Schwatzbach
Dr. J. U. Schwarzman
Dr. W. A. Shannon
Dr. E. R. Shephard
Dr. M. Silverman
Dr. H. L. Smith
Dr. W. C. Sparks
Dr. A. J. Speer
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Dr. J. A. Steinberg
Dr. L. E. Stevenson
Dr. H. F. Strine
Dr. H. H. Strine, Jr.
Dr. X. C. Suraci
Dr. N. G. Schuman
Dr. J. A. Swartwout
Dr. R. S. Taggert
Dr. J. A. Talbot
Dr. L. H. Taylor
Dr. W. D. Terrell
Dr. R. B. Thibadeau
Dr. E. W. Titus
Dr. G. B. Trible
Dr. J. H. Trinder
Dr. M. E. Twogood
Dr. M. Van Kinsberger
Dr. J. O. Warfield
Dr. J. W. Warner
Dr. O. N. Warner
Dr. D. B. Washington
Dr. J. C. Waters
Dr. J. W. Watts
Dr. C. A. Weaver
Dr. H. S. Weitzman
Dr. A. M. Wheeler
Dr. J. J. Whisman
Dr. C. S. White
Dr. D. White
Dr. Stephen Vergis
Dr. Harold A. Wood
Dr. J. R. Young
Dr. W. G. Young
Dr. Milton Greenberg
Dr. Ellis April
Dr. Katherine Chapman
Dr. Sollie Katzman
Dr. Howard Katzman
Dr. William Dyke
Dr. Leo Solet
Dr. J. D. Wynkoop

Courtesy Staff

Name	Year	Society
Dr. John M. Andrews	1938	D. of C.
Dr. Walter K. Angevine	1937	None
Dr. Ellis April	1938	None
Dr. William Dudley Aud	1937	None
Dr. Wm. Carlisle Barr, Jr.	1937	A. M. A.
Dr. Stanley H. Berenstein	1938	D. of C.
Dr. John F. Brennan	1937	D. of C.
Dr. Peter Paul Brue	1937	A. M. A.
Dr. John Leland Cardwell	1938	D. of C.
Dr. Jacob Ceppos	1938	None
Dr. Katherine A. Chapman	1937	D. C. & A. M. A.
Dr. Morris Chase	1937	D. C. & A. M. A.
Dr. David Stanford Clayman	1937	None
Dr. John Leonard Conley	1938	App. to D. C.
Dr. Harry J. Crawford	1938	None
Dr. J. Roscoe Creer	1938	App. to D. C.
Dr. Allen S. Cross	1937	D. C. & A. M. A.
Dr. Cyrus W. Culver	1938	D. C. & A. M. A.
Dr. Reginald A. Cutting	1938	None
Dr. Philip A. Degnan	1938	None
Dr. Philip Diatz	1937	D. of C.
Dr. William Dyke	1937	None
Dr. Edward J. Edelen	1938	None
Dr. Arthur O. Etienne	1938	None
Dr. Irvin Feldman	1937	None
Dr. Max Ellis Feldman	1938	D. of C.
Dr. Chas. E. Fierst	1938	None
Dr. Elmer W. Fugitt	1938	D. of C.
Dr. Oscar Hugh Fulcher	1938	D. C. & A. M. A.
Dr. George Roland Gable	1937	D. C. & A. M. A.
Dr. Benjamin Golden	1938	D. of C.
Dr. Reuben Goodman	1938	D. of C.
Dr. Milton M. Greenberg	1937	None
Dr. Charles W. Harnesberger	1938	D. C. & A. M. A.
Dr. Lester W. Harris	1937	None
Dr. Robert B. Havell	1938	D. of C.
Dr. Herman Hertzberg	1938	D. C. & A. M. A.
Dr. William Hollister	1937	None

Courtesy Staff

Name	Year	Society
Dr. Herman P. Hyder	1938	None
Dr. William Dabney Jarman	1937	App. to D. C.
Dr. Catherine W. Johnson	1938	D. of C.
Dr. Kenneth Francis Laughlin	1938	D. of C.
Dr. Alexander C. Leonardo	1937	None
Dr. James Wilbert Love	1937	D. C. & A. M. A.
Dr. John Joseph Lynch	1938	D. of C.
Dr. Lawrence W. Malin	1938	None
Dr. Wendell E. Malin	1938	A. M. A.
Dr. John T. Maloney	1937	None
Dr. Albert Edward Marland	1938	D. of C.
Dr. Francis Nichols McDonald	1938	D. of C.
Dr. C. Edwin McNamara	1937	App. to D. C.
Dr. Verlin Estelle Miles	1938	None
Dr. Frederick A. Moretti	1937	None
Dr. Howard T. Morse	1937	A. M. A.
Dr. Howard Ellsworth Newman	1938	None
Dr. Ernest James Parent	1938	None
Dr. Clarence A. Ransom	1938	D. C. & A. M. A.
Dr. Clyde P. Reeves	1937	D. of C.
Dr. Frank James Shaffer	1937	None
Dr. Leo Solet	1938	None
Dr. Siegfried Speyer	1938	App. to D. C.
Dr. Leland Ernest Stevenson	1937	D. of C.
Dr. Samuel J. Sugar	1937	None
Dr. John Alden Swartwout	1937	App. to D. C.
Dr. Francis D. Threadgill	1938	D. of C.
Dr. Stephen F. Verges	1937	None
Dr. James C. Waters	1937	A. M. A.
Dr. John D. Wynkoop	1937	D. of C.

[fol. 1882] [Stamp:] United States Court of Appeals for the District of Columbia. Filed Oct. 17, 1941. Joseph W. Stewart, Clerk

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No. 7929

AMERICAN MEDICAL ASSOCIATION, Defendant-Appellant,

v.

UNITED STATES OF AMERICA, Plaintiff-Appellee

No. 7930

MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA, Defendant-Appellant,

v.

UNITED STATES OF AMERICA, Plaintiff-Appellee

STIPULATION

It is hereby stipulated and agreed by and between counsel for the American Medical Association, the Medical Society of the District of Columbia, and the United States of America in the above entitled cases, subject to the approval of the United States Court of Appeals for the District of Columbia, that:

1. Counsel for any party may refer in brief or argument to any photostatic copy of any or all exhibits which were received in evidence in the trial of said cases.

2. All identifying marks, such as office stamps, file numbers, letterheads, dictation initials, and other notations, appearing upon the original exhibits received in evidence in the trial of the above entitled cases shall be considered as before the court as if specifically included in the narrative of testimony and shall have the same force and effect as if set forth in full therein, except where the trial court ruled that such marks and notations would not be received in evidence.

[fol. 1883] (S.) Edward M. Burke, Wm. E. Leahy, Seth W. Richardson, Chas. S. Baker, Warren E.

Magee, Counsel for the American Medical Association and the Medical Society of the District of Columbia. (S.) John Henry Lewin, by ECT, Grant W. Kelleher, by ECT, Special Assistants to the Attorney General; E. Compton Timberlake, Counsel for the United States of America.

Dated this 14th day of October, 1941.

Approved October 18, 1941. Groner, C. J.

[fol. 1884] [Stamp:] United States Court of Appeals for the District of Columbia. Filed Nov. 7, 1941. Joseph W. Stewart, Clerk

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, APRIL TERM, 1941

Special Calendar

No. 7930

THE MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA, a Corporation, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee

ORDER OF CONSOLIDATION OF THIS CASE WITH THE CASE ENTITLED "AMERICAN MEDICAL ASSOCIATION, APPELLANT, vs. UNITED STATES OF AMERICA, APPELLEE, No. 7929"

Upon motion of The Medical Society of the District of Columbia, a corporation, Appellant, and the consent of the United States of America, Appellee, it is this 7 day of November, 1941,

Ordered that this case be and it is hereby consolidated with the case of *American Medical Association, a Corporation, Appellant, vs. United States of America, Appellee, No. 7929*, and it is

Ordered that forty printed copies of the Record on Appeal (Transcript of Record) in the consolidated case of *American Medical Association, a corporation, Appellant, vs. United States of America, Appellee, No. 7929*, and *The*

Medical Society of the District of Columbia, a corporation, Appellant, vs. United States of America, Appellee, No. 7930, be filed within five days from the date of this order, and it is

Ordered that the appellants in the consolidated case of *American Medical Association, a corporation, Appellants, vs. United States of America, Appellee, No. 7929*, and *The Medical Society of the District of Columbia, a corporation, Appellant, vs. United States of America, Appellee, No.* [fol. 1885] *7930*, may file a single joint brief, that the United States of America, Appellee in said consolidated case, may file a single brief, and that the Appellants in said consolidated case may file a single joint reply brief within the periods of time prescribed in the stipulation filed in said cases and approved by this Court on June 3, 1941.

By the Court.

D. Lawrence Groner, Justice.

The foregoing order is consented to. E. Compton Timberlake, Of counsel for the United States of America, Appellee.

[fol. 1886] Monday, February 16th, A. D. 1942.

Before the Honorable Justin Miller and Wiley Rutledge, Associate Justices, and the Honorable Oscar R. Luhring, Associate Justice of the District Court of the United States for the District of Columbia designated to sit in these cases

No. 7929

American Medical Association, a Corporation, Appellant,

vs.

United States of America

No. 7930

Medical Society of the District of Columbia, a Corporation, Appellant,

vs.

United States of America

On motion of Mr. Seth W. Richardson, attorney for appellant in each case, the Court allowed the proceedings in

the oral argument of these cases to be stenographically reported.

The argument in the above entitled causes was commenced by Mr. Seth W. Richardson, attorney for appellant in each case. Thereupon, the Court sua sponte continued the hearing until Tuesday, February 24, 1942, at 10:30 a. m.

[fol. 1887] Tuesday, February 24th, A. D. 1942.

Before the Honorable Justin Miller and Wiley Rutledge, Associate Justices, and the Honorable George E. Martin, Chief Justice, retired, designated to sit in these cases:

No. 7929

AMERICAN MEDICAL ASSOCIATION, a Corporation, Appellant,

vs.

UNITED STATES OF AMERICA

No. 7930

MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA, a Corporation, Appellant,

vs.

UNITED STATES OF AMERICA

The Court announced that counsel for all parties had agreed that Mr. Justice Martin would consider the stenographic transcript of the oral argument of Seth W. Richardson, Esq., on behalf of appellant in each case on February 16, 1942, in lieu of having it repeated.

The argument was continued by Messrs. John Henry Lewin and Grant W. Kelleher, attorneys for appellee in each case, and concluded by Mr. William E. Leahy, attorney for appellant in each case.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No. 7929

AMERICAN MEDICAL ASSOCIATION, A CORPORATION, APPELLANT

v.

UNITED STATES OF AMERICA

No. 7930

MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA, A CORPORATION, APPELLANT

v.

UNITED STATES OF AMERICA

Appeal from the District Court of the United States for the District of Columbia

Decided June 15, 1942

Messrs. Seth W. Richardson and *William E. Leahy*, with whom *Messrs. Edward M. Burke, Charles S. Baker* and *Warren E. Magee* were on the brief, for appellant in each case.

Messrs. John Henry Lewin and *Grant W. Kelleher*, Special Assistants to the Attorney General, with whom *Assistant Attorney General Arnold* and *Messrs. E. Compton Timberlake* and *Walton S. Allen* were on the brief, for appellee in each case.

Mr. Edward M. Curran, United States Attorney, also entered an appearance for appellee in each case.

Before MILLER, RUTLEDGE and MARTIN, Associate Justices.

MILLER, *Associate Justice:* In *United States* v. *American Medical Association*,[1] we held that the term "in restraint of trade" as used in Section 3 of the Sherman Act had its genesis in the common law; that the practice of medicine was recognized by the English cases as constituting trade; that a restraint imposed upon the practice of medicine may constitute a restraint of trade; that restraints imposed upon the operation of hospitals and upon Group Health Association, designed to prevent it from making available to and financing medical services on behalf of its members may constitute restraint of trade; that the indictment under which appellants were charged stated a case under Section 3 of the Sherman Act. Accordingly, we held that the indictment was sufficient as against a demurrer; we reversed a judgment of the District Court, which had sustained a demurrer, and remanded the case for trial. Upon the trial which followed and at the

[1] 72 App. D. C. 12, 110 F. (2d) 703, *cert. denied*, 310 U. S. 644.

close of the Government's case the court directed verdicts of acquittal for two unincorporated associations and two individual defendants. Thereafter the jury convicted the appellants and acquitted all other defendants. Appeals from the judgment of the District Court, based upon these convictions, were consolidated for hearing in this court.

On this appeal it is suggested that the Supreme Court, in *Apex Hosiery Co.* v. *Leader*,[2] repudiated the doctrine stated in our earlier decision; hence that we should reconsider and abandon the position which we there took. But we see no reason to adopt the suggestion which, apparently, grew out of appellants' failure to distinguish between *trade* and *restraint of trade*. Appellants' confusion is evidenced by the following statement from their brief: "The *Apex* case held in substance and effect that no activity could be in 'trade' unless it was a commercial activity and exercised and used in such a way as to affect the market either by fixing prices or suppressing competition in the market to the injury of the public." Of course the Court did not so hold, nor has any court ever so held. Most activities which are in trade serve, rather than injure, the public.

In the *Apex* case,[3] no question was involved as to whether the petitioner was engaged in trade or commerce. The opening sentence of the opinion states, as an undisputed fact: "Petitioner, a Pennsylvania corporation, is engaged in the manufacture, at its factory in Philadelphia, of hosiery, a substantial part of which is shipped in interstate commerce." Neither was the Court in doubt as to whether trade or commerce was affected by the actions complained of.[4] The question which was presented for its decision was whether the conduct of the labor union and its members constituted *restraint* of trade, within the meaning of Section 1 of the Sherman Act.[5]

In answering this question the Court, first, restated the familiar common law doctrines relating to contracts and combinations in restraint of trade and the equally familiar history of the taking over, by the Sherman Act, of the common law concept of illegal restraints.[6] It then concluded that (1) the Sherman Act does not condemn all combinations and conspiracies which interrupt interstate transporta-

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[2] 310 U. S. 469.

[3] 310 U. S. 469, 480.

[4] Apex Hosiery Co. v. Leader, 310 U. S. 469, 484: "Cessation of petitioner's manufacturing operations, which respondents compelled, indubitably meant the cessation of shipment interstate. The effect upon the commerce resulted naturally and inevitably from the cause. The occupancy of petitioner's factory by the strikers prevented the shipment of the substantial amount of merchandise on hand when the strike was called. In point of the immediacy of the effect of the strikers' acts upon the interstate transportation involved and of its volume, the case does not differ from many others in which we have sustained the Congressional exercise of the commerce power."

[5] Apex Hosiery Co. v. Leader, 310 U. S. 469, 487, 490: ". . . the question to which we must address ourselves is whether a conspiracy of strikers in a labor dispute to stop the operation of the employer's factory in order to enforce their demands against the employer *is the kind of restraint of trade* or commerce at which the Act is aimed * * *. Since in the present case, as we have seen, the natural and predictable consequence of the strike was the restraint of interstate transportation the precise question which we are called upon to decide is whether that *restraint* resulting from the strike maintained to enforce union demands by compelling a shutdown of petitioner's factory *is the kind of 'restraint of trade or commerce'* which the Act condemns." [Italics supplied]

[6] Apex Hosiery Co. v. Leader, 310 U. S. 469, 497-498.

tion;[7] (2) labor unions are to some extent and in some circumstances subject to the Act;[8] but (3) it does not apply to all labor union activities affecting interstate commerce;[9] (4) the evil at which the Sherman Act was aimed was the control of the market "by suppression of competition in the marketing of goods and services . . .";[10] (5) the end sought was the prevention of "restraints to free competition in business and commercial transactions which tended to restrict production, raise prices or otherwise control the market to the detriment of purchasers or consumers of goods and services . . .";[11] and, finally (6) "Restraints on competition or on the course of trade in the merchandising of articles moving in interstate commerce is not enough, unless the restraint is shown to have or is intended to have an effect upon prices in the market or otherwise to deprive purchasers or consumers of the advantages which they derive from free competition."[12]

The trade or commerce which was involved in the present case was of three kinds: (1) The making available and financing of medical and hospital services; (2) medical service itself, *i.e.*, service rendered by medical doctors; (3) hospital service, *i.e.*, service rendered by hospital staffs and the use of hospital facilities. As we indicated in our earlier opinion the common law recognized the practice of medicine as being trade[13] and there is nothing in the *Apex* case to suggest the contrary. It may be regrettable that Congress chose to take over in the Sherman Act the common law concept of trade, at least to the extent of including therein the practice of medicine. Developments which have taken place during recent decades in the building up of standards of professional education and licensure, together with self-imposed standards of discipline and professional ethics, have, in the belief of many persons, resulted in substantial differences between professional practices and the generally accepted methods of trade and business. As we pointed out in our earlier decision,[14] the American Medical Association and other local medical associations have undoubtedly made a profound contribution to this development. However, our task is not to legislate or declare policy in such matters but, rather, to interpret and apply standards and policies which have been declared by the legislature. That Congress did use the common law test there is no doubt. That Congress was not otherwise advised was perhaps because of the failure of the professional groups to insist upon the distinction and to secure its legislative recognition. In any event, there is no doubt that Group Health Association was engaged in trade or commerce, within the meaning of the applicable section of the statute.[15] It is not necessary, in order to constitute trade or busi-

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[7] Apex Hosiery Co. v. Leader, 310 U. S. 469, 486, 491.

[8] *Id.* at 489.

[9] *Ibid.*

[10] *Id.* at 493.

[11] *Ibid.* and see n. 15.

[12] Apex Hosiery Co. v. Leader, 310 U. S. 469, 500-501.

[13] United States v. American Medical Association, 72 App. D. C. 12, 20, 110 F. (2d) 703, 711, *cert. denied*, 310 U. S. 644.

[14] *Id.* at 20-21, 110 F. (2d) at 711-712.

[15] Nonprofit cooperative associations have been held to be "doing business" in a variety of situations. For purposes of taxation: Maryland & Virginia Milk Producers' Ass'n., Inc. v. District of Columbia, 73 App. D. C. 399, 119 F. (2d)

ness, that it shall be carried on for profit.[16] Appellants protest that the District Court has said in *Group Health Association* v. *Moor*:[17] "The actions of the plaintiff [G.H.A.] in no way tend to commercialize the practice of medicine." They argue from this that the activities of Group Health Association were not commercial activities and hence not in trade within the meaning of the Sherman Act. But this argument misses the point. The activities of Group Health Association are commercial, but because the lay executives of Group Health Association do not in any way interfere with the professional work of the medical doctors, their commercial activities do not tend to commercialize the *practice* of medicine. Medical doctors have long conceded the propriety of medical services furnished by large industrial organizations, to their employees, by doctors also in their employ.[18] There is no greater incongruity in the making available of medical services by a cooperative association or a nonprofit mutual benefit association, in similar manner; nor any more reason for suggesting that such industrial organizations are not engaged in commercial activities. In each case the service is rendered in accordance with the standards

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787, *cert. denied*, 314 U. S. 646; Hazen v. National Rifle Ass'n., 69 App. D. C. 339, 347, 101 F. (2d) 432, 440; Memphis Chamber of Commerce v. Memphis, 144 Tenn. 291, 296-297, 232 S. W. 73, 74; Sears, Roebuck & Co. Employees' Savings & Profit-Sharing Pension Fund v. Commissioner of Internal Revenue, 7 Cir., 45 F. (2d) 506, 509. For purposes of qualifying to do business under the corporation laws of a foreign state: Ku Klux Klan v. Commonwealth ex rel. State Corporation Commission, 138 Va. 500, 509, 122 S. E. 122, 125; State ex rel. Griffith v. Ku Klux Klan, 117 Kan. 564, 572-573, 232 P. 254, 258; 17 FLETCHER CYC. CORP. (Perm. Ed.) § 8467. For purposes of compliance with legislation regulating corrupt political practices: La Belle v. Hennepin County Bar Ass'n., 206 Minn. 290, 294, 288 N. W. 788, 790. For purposes of service of process on agents: Pacific Typesetting Co. v. International Typographical Union, 125 Wash. 273, 277, 216 P. 358, 360. *Cf.* Roman Catholic Archbishop v. Industrial Accident Commission, 194 Cal. 660, 670-671, 230 P. 1, 5 (religious corporation sole held sufficiently engaged "in trade or business" to warrant application of Workmens' Compensation Law); Gardner v. Trustees of Main Street M. E. Church, 217 Iowa 1390, 1395, 250 N. W. 740, 745-746, superseding opinion in 244 N. W. 667, 669; Note, 18 IOWA L. REV. 557.

[16] Hazen v. National Rifle Ass'n., 69 App. D. C. 339, 345, 101 F. (2d) 432, 438, and authorities there cited.

[17] D. C., 24 F. Supp. 445, 446.

[18] Virginia Iron, Coal & Coke Co. v. Odle's Adm'r., 128 Va. 280, 305, 105 S. E. 107, 115; McCord, *The Economics of Industrial Medicine*, PROCEEDINGS OF THE ANNUAL CONGRESS ON MEDICAL EDUCATION, MEDICAL LICENSURE AND HOSPITALS (1932) 83; Leland, *Contract Practice*, *id.* at 75, 81: "That there are many conditions under which contract practice is not only legitimate and ethical, but in fact the only way in which competent medical service can be provided, becomes evident on analysis. For instance, when large numbers of workmen are employed remote from urban centers, as in some mining or logging camps, efficient medical service can be secured only by contracting with some competent physician to do the work. Certain industrial situations arise wherein large employers of labor are compelled by law to provide medical services for their employees under certain conditions, and this at times can be secured only by some form of contract."; Laufer, *Ethical and Legal Restrictions on Contract and Corporate Practice of Medicine*, 6 LAW AND CONTEMP. PROB. 516, 524-527; Note, 48 YALE L. J. 346, 349. Similar questions have arisen in connection with other professions. For a general discussion see Note, 44 HARV. L. REV. 1114. As applied to practice of law see Merrick v. American Security & Trust Co., 71 App. D. C. 72, 77, 107 F. (2d) 271, 276, *cert. denied*, 308 U. S. 625; 6 FLETCHER CYC. CORP. (Perm. Ed.) § 2524; 5 LAW AND CONTEMP. PROB. No. 1 (pp. 1-174).

of the profession and to that extent uncontrolled by the corporate employer.[19] But, at the same time, the salaries of such professional employees may undoubtedly be paid by the corporation and charged as an ordinary and necessary expense of business.[20] Although there is authority for the proposition that for some purposes charitable hospitals are not engaged in trade, business or industry,[21] we have no doubt that the hospitals described in the indictment were engaged in trade and commerce within the meaning of the common law and of the Sherman Act.[22]

So far as Group Health and the hospitals are concerned, therefore, their activities are properly described as business and commercial in character. There is also no question that commercial and business competition was not only the possible but the probable result of Group Health's activities. Consequently—entirely apart from any direct restraint upon the practice of medicine itself—if a conspiracy was shown, the purpose of which was to restrain competition, raise prices, or otherwise control the market to the detriment of purchasers or consumers of medical or hospital services, by destroying or injuring Group Health Association, it was sufficient to sustain the conviction.

The fact of commercial and business competition is the predominant note in the controversy which preceded the initiation of criminal prosecutions in this case.[23] One of the major purposes of Group Health

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[19] Pearl v. West End St. Ry. Co., 176 Mass. 177, 179, 57 N. E. 339.

[20] 53 STAT. (Part I) 12, 26 U. S. C. A. § 23(a)(1); Corning Glass Works v. Lucas, 59 App. D. C. 168, 170-171, 37 F. (2d) 798, 800-801, *cert. denied*, 281 U. S. 742; Elm City Cotton Mills v. Commissioner of Internal Revenue, 5 B. T. A. 309, 312; 1 MONTGOMERY, FEDERAL TAX HANDBOOK (1940) 417.

[21] Private hospitals, supported by appropriations and charity, held not an industry, and its employees not engaged in "industry, trade, craft or occupation" within the meaning of Anti-Injunction Act. Western Pennsylvania Hospital v. Lichliter, 340 Pa. 382, 387, 17 A. (2d) 206, 209. A charitable home for girls held not a "business, trade or industry" within legitimate operation of power to make city zoning laws. Rochester v. Rochester Girls' Home, 194 N. Y. S. 236, 237. A charitable home for the aged not a business within the sense of a restrictive covenant. Easterbrook v. Hebrew Ladies' Orphan Society, 85 Conn. 289, 298, 82 A. 561, 564; Note, 41 L. R. A. (N. S.) 615. A municipal ordinance declaring hospitals for profit to be nuisances does not discriminate in favor of charitable hospitals, as the distinction is reasonable. The former are and the latter are not "businesses." Lawrence v. Nissen, 173 N. C. 359, 364, 91 S. E. 1036, 1038.

[22] In Jordan v. Tashiro, 278 U. S. 123, 127-129, it was held that operation of a hospital was included within the meaning of the words "trade" and "commerce" as used in a treaty authorizing Japanese subjects in the United States "to carry on trade" and to "do anything incident to or necessary for trade upon the same terms as native citizens or subjects . . . ." *Cf.* Lawrence v. Nissen, 173 N. C. 359, 364, 91 S. E. 1036, 1038: "The establishment and conduct of hospitals for pay is now a recognized and established business." In Armendares v. Hotel Dieu, Tex. Civ. App., 145 S. W. 1030, 1031, it was held that in so far as a hospital accepted paying patients for the purpose of obtaining revenue to carry on its charitable work, it was carrying on a business.

[23] The identification of "fair competition" with ethical principles is expressed in the Principles of Medical Ethics of the American Medical Association and in the Constitution of the District Medical Society.

Chapter III, Article VI of the Principles of Medical Ethics reads in part as follows:

"Conditions of Medical Practice. Section 2. It is unprofessional for a physician to dispose of his services under conditions that make it impossible to render adequate service to his patient or which interfere with reasonable competition among the physicians of a community. . . .

Association was to provide *low-cost medical service*, on a prepayment basis.[24] Appellants, in fact, recognize the existence of a controversy concerning this question. They requested an instruction in which

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"Contract Practice. Section 3. . . . Contract practice per se is not unethical. However, certain features or conditions if present make a contract unethical, among which are: . . . 2. When there is underbidding to secure the contract. 3. When the compensation is inadequate to assure good medical service. 4. When there is interference with reasonable competition in a community."

Chapter IX, Article III, Section 1 of the Constitution reads as follows: "It is unprofessional for a physician to dispose of his services under conditions that make it impossible to render adequate service to his patient *or which interfere with reasonable competition among the physicians of a community.*" [Italics supplied]

These provisions were utilized for purposes of disciplinary action against members of the District Medical Society employed by Group Health. Thus, the expulsion of Dr. Scandiffio, a member of the Group Health staff, from the District Medical Society followed a finding of the Compensation, Contract and Industrial Medicine Committee that he was guilty of violating Sections 1 and 2, Article III, and Section 5, Article IV, all of Chapter IX of the Constitution of the Society. That this disciplinary action against members of the Society was intended to affect Group Health Association is shown by the letter of December 10, 1937, sent by the Chairman of the Compensation, Contract and Industrial Medicine Committee of the Society to its Executive Committee which reads as follows: "On November 22nd, 1937, our committee addressed a communication to you advising you of our investigation concerning Drs. Allan E. Lee and M. Scandiffio, and recommended that they be expelled as members of the Society because of their violation of Section 1, Article III, Chapter 9, and Section 5, Article IV, Chapter 9, of the Constitution of the Medical Society of the District of Columbia. Our committee is today in receipt of a letter from Dr. Allan E. Lee, advising us that he has resigned from the staff of Group Health Association. Inasmuch as our recommendation respecting Dr. Lee was based upon the fact that he had entered into a contract with Group Health Association and that contract has now been terminated by him, we feel that no further action should be taken with respect to Dr. Lee. We therefore, respectfully request that the charges and recommendations against Dr. Lee, embodied in our communication of November 22, 1937, be withdrawn and that appropriate action be taken by your committee thereon."

It is shown, also, by the letter of the same Chairman to Dr. Lee under date of December 21, 1937: "In acknowledgement of your letter of December 10, in which you enclose a copy of your resignation as a member of the medical staff of Group Health Association, Inc., may I say that upon receipt of same the Compensation, Contract and Industrial Medicine Committee appeared before the Executive Committee and requested a withdrawal of its charges against you, which request was granted. Such action places your status as that of a member now in good standing."

The concern of the defendants Association and Society with the effect of Group Health on the economic status of the medical profession, and upon competition in financing and making available medical and hospital services, is abundantly illustrated by articles and statements of officers and members thereof. An article, appearing in the Journal of the American Medical Association for October 2, 1937, reads in part as follows: "Out of a total population of 486,869 in the District of Columbia, 115,912 are civil employees of the United States government, and, of these, 2,517 are employees of the Federal Home Loan Bank Board and its affiliated agencies. If to these persons, all of whom are eligible for membership in Group Health Association, their dependents are added, allowing an average of two dependents for each employee, a total of 347,736 persons is reached, out of a total population of 486,869 that the promoters of Group Health Association, according to their certificate of incorporation, seek to withdraw from the ordinary practice of medicine and to cover into a group health insurance contract practice system and treat through physicians hired for that purpose. The effect of the withdrawal from private practice of even one-half that number of persons, all of whom are able to pay for medical services, will materially disturb medical practice in the District of Columbia and react against public interest. * * * The scheme is so planned that the richer and more liberally paid employees are

they asserted their right to disapprove the attitude of Group Health Association with respect to low-cost medicine plans.[25] That appellants' attack on Group Health Association was designed to restrain

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to obtain medical service at rates based on the incomes of the poorest employees. The courts have repeatedly held that the value of medical services rendered to a patient may be properly appraised in relation to his wealth, just as the value of legal services are commonly appraised in relation to the value of the interests that the lawyer is called on to protect, whether interests involving the life of his client or his client's property. Under the present scheme, fees that are charged for medical services to the richer and more liberally paid employees are to be identical with those charged employees of the lowest grade, doing part-time work."

The author of this article, who was one of the individual defendants, was Director of the Bureau of Legal Medicine and Legislation of the American Medical Association from 1922 to 1939, when he retired. He holds degrees both of law and of medicine. He was called as a witness by appellants and developed the theme of the article further as follows:

"If GHA expanded its activities to a point where it took over a substantial part of the people of the District of Columbia—rich and poor alike,—the United States Government subsidizing its services—it is quite obvious that the various doctors in the District of Columbia, with their plants, with their experience, and everything else, would not be able to compete on a fair, honest basis; and that is when medical practice would be broken down by the subsidized practice, tending to destroy the medical profession."

The record reveals other similar statements of which the following are examples: "I think it would be exceedingly unfortunate to stabilize the income of the medical profession, because there is just as much difference in the qualifications of doctors as there is in the qualifications of stenographers. Some of them can do it and some of them are rotten. * * * It would be unfortunate to stabilize the pay of doctors."

". . . let us . . . consider what would happen in the District of Columbia provided you were able to obtain the maximum of enrollment in this corporation. . . . you see what it would do here as an economic thing. * * * It would simply result in the necessary exodus of a large part of the medical profession of the District of Columbia, . . ."

". . . Quite naturally, however, the organized profession is insisting upon not being forced by misguided or unfair competition to give up any of its rightful prerogatives."

"The question has many implications. . . . About all the outside doctor would have to do would be to take care of the indigent and the riff-raff and the members who had been dropped by the club."

"Dr. McGovern said that he looked upon this Group Health Association movement as an organization coming in and *interfering with his business*. He added that he expected to be in practice for some 20 years and he did not propose, if it could be avoided at all, to have an organization such as was proposed to interfere with his work and income. 'Just what are you fellows going to do about it?' He cited the instance of the musicians who had succeeded in preventing the Marine Band from cutting in on their business in playing before assemblies without cost to the sponsors. . . . The lawyers as a group had prevented inroads in their business. 'It just doesn't seem that we are active in preventing the National Government from entering the practice of medicine and interfering with our business. It should be demanded from the American Medical Association that they send a man down here now and see just what could be done.'" [Italics supplied]

". . . corporation practice of medicine . . . in the District of Columbia threatens to have a far reaching and deleterious effect on the private practice of medicine."

". . . one is compelled to wonder what will become of the private practice of medicine in those centers if the government is to subsidize cut-rate medical schemes. . . ."

Maintenance of "free and fair competition" was the theme of defendants' request for instruction No. 31, refused by the trial court which read in part:

competition is revealed by the following statement in their Reply Brief.: "Appellants insist that the origin of GHA is traceable directly to the Twentieth Century Fund, its subsidiary corporations, and others whose purpose was to destroy the private practice of medicine in the District . . . and to establish corporate practice of medicine." If, as appellants thus contend, they believed that the purpose of the Twentieth Century Fund and the purpose of GHA was to destroy the private practice of medicine in the District, by establishing corporate practice of medicine, obviously, the bitterest kind of competition in making available medical and hospital service was under way. If the purpose of appellants was to prevent such competition by the destruction of GHA, obviously that purpose was to restrain trade.[26]

" . . . the defendants were entitled, both collectively and individually, to adopt and carry out reasonable regulations in professional practice for the purpose of maintaining free and fair competition in the District of Columbia and . . . any restraints caused thereby upon Group Health Association, Inc., its doctors, members or operations, without more, would not violate the Sherman Act."

[24] Group Health Association is described in the indictment as follows: "33. Group Health Association, Inc., was incorporated on February 19, 1937, and authorized to do business under and by virtue of the laws of Congress for the District of Columbia. Said corporation is a non-profit, cooperative association of employees of certain departments in the executive branch of the United States Government employed in the District of Columbia. Most members of Group Health Association, Inc., are embraced within the low income group, over 80% of them earning annual incomes of not more than $2,000. Said corporation is engaged in the District of Columbia in the business of arranging for the provision of medical care and hospitalization to its members and their dependents on a risk sharing prepayment basis. Said corporation collects monthly payments in the form of dues from its members. Medical care is provided by a medical staff consisting of salaried general practitioners and specialists engaged in group practice under the sole direction of a medical director. Said corporation pays adequate salaries to the doctors on its medical staff and provides the medical staff with a modern, well equipped clinic, which was opened on November 1, 1937. Said corporation also defrays, within limits, the expenses of hospitalization of its members and their dependents. The personal relationship ordinarily existing between doctor and patient obtains between the doctors on the medical staff of Group Health Association, Inc. and their Group Health Association, Inc. patients."

[25] "Evidence has been permitted in this case with respect to the public need or lack of need of so-called low-cost medicine. I charge you that any need, or lack of need, for a low-cost medicine plan, has nothing to do with the right of the defendants to exercise their lawful powers and duties in connection with the practice of the medical profession. The rights of Group Health Association, Inc. are no greater because of an alleged need for low-cost medicine, than if no such need existed. Group Health Association, Inc. had a lawful right to disapprove of what it may have thought was the attitude of the defendants toward low-cost medicine plans, just as the defendants had an equal right to disapprove of what the defendants thought was the attitude of Group Health Association, Inc. with respect to low-cost medicine plans. Each party to the controversy had the right to further and advance its own opinion in the controversy by all methods of legitimate persuasion and reasoned argument whether applied to members of the medical profession, the Washington hospitals, or the public. Refused. J. M. P."

[26] That appellants' attack on Group Health was for the purpose of restraining competition is admitted, by implication, also in their opening brief: " . . . that a corporation known as the Twentieth Century Fund with assets of approximately $3,500,000, and whose main objective was to actively promote the organization of group payment agencies, i. e., organizations through which groups of people might obtain all-around medical and hospital care in return for some fixed periodic payments, was subsidizing GHA and enabling it to *sell medical services*

The important question is, therefore, whether the methods used constituted improper restraints of competition, within the meaning of the statute in the trade or commerce of financing and making available all or any of the three several services to which reference has been made. And, as the prosecution in the present case is under Section 3 of the Act no question of the interstate character of that trade or commerce is involved. Appellants urge a number of contentions to negate unlawful restraint. The first of these is that the controversy here involved is a labor dispute; hence that appellants are excluded from the operation of the Sherman Act, by virtue of provisions of the Clayton Act and of the Norris-LaGuardia Act.

Presumably appellants' contention casts medical doctors in the role of laborers; Group Health in the role of employer; and themselves in the role of labor organizations, or perhaps in a role comparable to that of the New Negro Alliance;[27] all this on the assumption that medical practice, the furnishing of medical services and the furnishing of hospital services, come within the common law definition of trade; with the consequence, they argue, that a controversy arising between these three groups, or any two of them, concerns "terms or conditions of employment, or . . . the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, . . ."[28] That medical doctors, lawyers, teachers and other professional people can be and are *employed* there is no doubt. Some professional or pseudo-professional groups have organized themselves into unions. Medical societies and bar associations are sometimes referred to by laboring people as "doctors' unions" and "lawyers' unions." But after all it is a *labor dispute* which is the subject of definition and application in these Acts. Although, in the broader sense, all forms of mental and physical exertion may be called labor, even including attendance at a symphony concert or the labor of childbirth; and, although a dispute concerning any form of such labor might perhaps be called a labor dispute, the purpose of Congress seems to have been to describe a more limited range of activity.[29]

The Committee Reports on the Clayton and Norris-LaGuardia Acts indicate that the legislation was enacted in contemplation of disputes between workingmen,[30] or wage earners,[31], or laborers,[32] on the one

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at less than cost for the purpose of destroying the private practice of medicine and to set up in its place or stead a theory of the distribution of medical services advocated by such Fund; that HOLC was diverting Government moneys to subsidize GHA and thereby enabling it *to sell medical services at less than cost*; . . ." [Italics supplied]

[27] New Negro Alliance v. Sanitary Grocery Co., 303 U. S. 552.

[28] Norris-LaGuardia Act of March 23, 1932, 47 STAT. 73, 29 U. S. C. § 113(c).

[29] Columbia River Packers Ass'n., Inc. v. Hinton, 315 U. S. 143; Note, 51 YALE L. J. 1039, 1040-1041.

[30] H. R. REP. No. 612, 62d Cong., 2d Sess. (1912) 10: "The consensus of judicial view . . . is that *workingmen* may lawfully combine to further their material interests without limit or constraint, and may for that purpose adopt any means or methods which are lawful. It is the enjoyment and exercise of that right and none other that this bill forbids the courts to interfere with." [Italics supplied]

[31] SEN. REP. No. 163, 72d Cong., 1st Sess. (1932) 9: "The right of *wage earners* to organize and to act jointly in questions affecting wages, conditions of labor, and the welfare of labor generally is conceded and recognized by all students of the subject." [Italics supplied]

hand, and aggregated capital, commonly in corporate form, on the other. A physician is not a workman[33] or a laborer,[34] as those words are known to the law, and his compensation is not wages.[35]

The matrix of the controversy must be the employer-employee relationship,[36] although the disputants need not stand in the proximate relation of employer and employee.[37] If physicians employed on the contract basis in industrial medicine should form associations for collective bargaining they might, perhaps, fairly be said to come within the operation of the Norris-LaGuardia and Clayton Acts.[38] Or if the laity were so dominantly organized into consumer cooperatives that it might properly be said of the physician, as of the individual unorganized worker, that he is "commonly helpless . . . to obtain acceptable terms and conditions of employment, . . ." or protection "from the interference, restraint, or coercion of employers of labor, . . ."[39] then possibly the two Acts would be applicable.[40] But, under the actual facts of the present case, even the contracting physicians occupy no such position. For a fixed sum they assumed to render services when needed.[41] In the rendering of those services, when needed, they are not subject to supervision by the Association.[42] Originally independent contractors, they do not lose that status by contracting to perform unsupervised services.[43]

In our opinion, therefore, neither the Clayton Act nor the Norris-LaGuardia Act was intended to cover such a controversy as existed

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[33] *Ibid.*: "A single *laborer*, standing alone, confronted with such far-reaching, overwhelming concentration of employer power, and compelled to labor for the support of himself and family, is absolutely helpless to negotiate or to exert any influence over the fixing of his wages or the hours and conditions of his labor." [Italics supplied]

[34] Harris v. Mayor and City Council, 151 Md. 11, 17, 133 A. 888, 890; nor is a lawyer, Gay v. Hudson River Elec. Power Co., N. D. N. Y., 178 F. 499, 502; nor a skilled chemist, Bagnall v. Levinstein, Ltd., [1907] 1 K. B. 531, 540; Note, 129 A. L. R. 900.

[35] Weymouth v. Sanborn, 43 N. H. 171, 173; nor is a minister, Holy Trinity Church v. United States, 143 U. S. 457, 463; nor a lawyer, Latta v. Lonsdale, 8 Cir., 107 F. 585; nor a teacher, School Dist. No. 94, v. Gautier, 13 Okla. 194, 204, 73 P. 954, 957; nor an actor, Universal Pictures Corp. v. Superior Court, Cal., 50 P. (2d) 500, 501-502.

[36] Magers v. Dunlap, 39 Ill. App. 618, 619; First Nat. Bank v. Barnum, D. C. M. D. Pa., 160 F. 245, 248; Gay v. Hudson River Elec. Power Co., N. D. N. Y., 178 F. 499, 503; nor the fees of lawyers, First Nat. Bank v. Barnum, *supra*. *Cf.* Romans 6:23.

[37] Columbia River Packers Ass'n., Inc. v. Hinton, 315 U. S. 143.

[38] *Ibid*; New Negro Alliance v. Sanitary Grocery Co., 303 U. S. 552.

[39] See Associated Press v. National Labor Relations Board, 301 U. S. 103. *Cf.* Michigan Trust Co. v. Grand Rapids Democrat, 113 Mich. 615, 617, 71 N. W. 1102, 1103.

[40] Norris-LaGuardia Act of March 23, 1932, 47 STAT. 70, 29 U. S. C. § 102.

[41] Columbia River Packers Ass'n., Inc. v. Hinton, 315 U. S. 143.

[42] Jordan v. Group Health Ass'n., 71 App. D. C. 38, 45, 107 F. (2d) 239, 246.

[43] Group Health Association By-Laws.

[44] Meigs v. United States, D. Mass., 30 F. Supp. 68, 69-70, *aff'd*, 115 F. (2d) 13; Virginia Iron, Coal & Coke Co. v. Odle's Adm'r., 128 Va. 280, 289, 105 S. E. 107, 109. See Cardillo v. Mockabee, 70 App. D. C. 16, 18, 102 F. (2d) 620, 622.

in the present case. The carefully chosen language of the *Hutcheson* case[44] seems particularly significant in this respect: "The Norris-LaGuardia Act reasserted the original purpose of the Clayton Act by infusing into it the *immunized trade union activities* as redefined by the later Act. In this light § 20 removes all *such allowable conduct* from the taint of being a 'violation of any law of the United States,' including the Sherman Law. * * * It was precisely in order to minimize the difficulties to which the general language of the Sherman Law in its application to *workers* had given rise, that Congress cut through all the tangled verbalisms and enumerated concretely the types of activities which had become *familiar incidents of union procedure.*"[45] [Italics supplied] In the *Hutcheson* case the Court expressly distinguished the situation in which a union acts, not in its own self-interest, but in combination for other purposes, with nonlabor groups.[46] It cited as an example *United States* v. *Brims.*[47] In the latter case it was held that a conspiracy of manufacturers of millwork, building contractors a[illegible] union carpenters, to check competition from nonunion made m[illegible] work was a violation of the Sherman Act; the conspiracy agreement being that the manufacturers and contractors would employ only union carpenters, who in turn would refuse to install the nonunion millwork. And, in contrast, the Court, in the *Hutcheson* case, also said: "Clearly, then, the facts here charged constitute lawful conduct under the Clayton Act unless the defendants cannot invoke that Act because *outsiders to the immediate dispute also shared in the conduct.*"[48] [Italics supplied] This, it would seem, was also the situation in the *New Negro Alliance* case.[49] Assuming a *bona fide* labor dispute, the participation of a non-labor organization therein should not, without more, deprive it of its character as a labor dispute; give it the character of criminal conduct; or authorize judicial restraint except in compliance with the limitations of the Norris-LaGuardia Act.

But, under the circumstances of the present case, appellants cannot escape the proscriptions of the Sherman Act even if we assume that the controversy was a labor dispute. As we have already noticed, the

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[44] United States v. Hutcheson, 312 U. S. 219, 227, 231: "Whether the use of conventional, peaceful activities by a union in controversy with a rival union over certain jobs is a violation of the Sherman Law, Act of July 2, 1890, 26 Stat. 209, as amended, 15 U. S. C. § 1, is the question. * * * The Norris-LaGuardia Act removed the fetters upon *trade union activities*, which according to judicial construction § 20 of the Clayton Act had left untouched, by still further narrowing the circumstances under which the federal courts could grant injunctions in labor disputes. More especially, the Act explicitly formulated the 'public policy of the United States' in regard to the industrial conflict, and by its light established that the allowable area of *union activity* was not to be restricted, as it had been in the *Duplex* case, to an immediate employer-employee relation. Therefore, whether *trade union conduct* constitutes a violation of the Sherman Law is to be determined only by reading the Sherman Law and § 20 of the Clayton Act and the Norris-LaGuardia Act as a harmonizing text of outlawry of labor conduct." [Italics supplied]

[45] *Id.* at 236, 237.

[46] United States v. Hutcheson, 312 U. S. 219, 232.

[47] 272 U. S. 549.

[48] United States v. Hutcheson, 312 U. S. 219, 233.

[49] New Negro Alliance v. Sanitary Grocery Co., 303 U. S. 552, 555-556; Columbia River Packers Ass'n., Inc. v. Hinton, 315 U. S. 143.

Supreme Court plainly indicated in the *Apex* case[50] that some phases of labor disputes may come under the condemnation of the Sherman Act; if, for example, they involve a combination or conspiracy which has as its purpose restraint upon competition, or if the labor organization is used by combinations of those engaged in an industry as the means or instrument for suppressing competition or fixing prices.[51] In the *Apex* case the Sherman Act was held to be inapplicable because it did not appear that the strikers' acts were intended to restrain competition or that they had any effect on market prices of goods or services.[52] But that was not the situation of the present case.

Appellants reassert—in support of their contention that their conduct was not in restraint of trade—a proposition urged on the earlier appeal, that their conduct was no more than a reasonable regulation of the practice of medicine; and they rely upon the language of our earlier opinion: "If there is any justification for the restraint, so as to make it reasonable as a regulation of professional practice, it must be shown in evidence as a defense . . . ."[53] But in that same opinion—after recognizing the large and beneficent part which appellants have played in raising the standards of medical practice, and in contributing to the relief of the unfortunate and destitute—we also said: "Notwithstanding these important considerations, it cannot be admitted that the medical profession may through its great medical societies, either by rule or disciplinary proceedings, legally effectuate restraints as far reaching as those now charged."[54] And we did not, by any means, declare the law to be—as appellants now assert—that a conspiracy "entered into with the object of properly and fairly regulating the practice of medicine, . . ." was not a violation of the Sherman Act. The prayer for instruction which appellants requested upon this point was contradictory on its face and was properly refused. Under no circumstances could the commission of crime be justified as a reasonable regulation of professional practice.[55]

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[50] Apex Hosiery Co. v. Leader, 310 U. S. 469, 487-489.

[51] *Id.* at 501. See New Negro Alliance v. Sanitary Grocery Co., 303 U. S. 552, 562-563: " . . . short of fraud, breach of the peace, violence, or conduct otherwise unlawful. . . ."; United States v. Hutcheson, 312 U. S. 219, 231: "Therefore, whether trade union conduct constitutes a violation of the Sherman Law is to be determined only by reading the Sherman Law and § 20 of the Clayton Act and the Norris-LaGuardia Act as a harmonizing text of outlawry of labor conduct."

[52] Apex Hosiery Co. v. Leader, 310 U. S. 469, 501-502.

[53] United States v. American Medical Ass'n., 72 App. D. C. 12, 21, 110 F. (2d) 703, 712, *cert. denied*, 310 U. S. 644.

[54] *Ibid.*

[55] In Anderson v. United States, 171 U. S. 604, 615-616, upon which appellants rely, the law was stated in the following terms: "Where the subject-matter of the agreement does not directly relate to and act upon and embrace interstate commerce, and where the undisputed facts clearly show that the purpose of the agreement was not to regulate, obstruct or restrain that commerce, but that it was entered into with the object of properly and fairly regulating the transaction of the business in which the parties to the agreement were engaged, such agreement will be upheld as not within the statute, where it can be seen that the character and terms of the agreement are well calculated to attain the purpose for which it was formed, and where the effect of its formation and enforcement upon interstate trade or commerce is in any event but indirect and incidental, and not its purpose or object."

The wide scope of appellants' contention concerning their power to effect a reasonable regulation of the practice of medicine is revealed by proposed instructions and by their arguments on brief which seem to assume for them powers of a state legislature to enact and enforce laws to require improvement of standards of professional practice. Thus they rely upon such cases as *Semler* v. *Oregon State Board of Dental Examiners*[56] and *Graves* v. *Minnesota*,[57] which involved the constitutionality of state statutes and in each of which the statute was upheld on the ground that it constituted a reasonable exercise of the police power of the state. Needless to say, appellants have no such power.

The situation which confronts appellants, and which they have sought to control, is not confined to the medical profession alone. Profound changes in social and economic conditions have forced members of all professional groups to make readjustments. The fact that these changes may result even in depriving professional people of opportunities formerly open to them does not justify or excuse their use of criminal methods to prevent changes or to destroy new institutions. Lawyers, too, have seen, during recent decades, large scale changes in their professional work.[58] There was a time when lawyers worked entirely on fee or retainer in particular cases and controversies; now many of them are salaried employees on the staffs of large corporate industrial and financial organizations. Many of the simpler functions of business which once required the assistance of lawyers are now the routine work of better educated and more highly skilled business men; some of them law school graduates. Recent legislation has had the effect of removing from the field of judicial controversy and determination, a large percentage of cases which at an earlier time constituted the mainstay of lawyers' practice.[59] A good example is found in connection with accidents occurring in industrial employment. In some of this new legislation representation by lawyers is expressly discouraged.[60] In some of it, formal rules of pleading, practice and evidence—the lawyers' tools—are dispensed with.[61]

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[56] 294 U. S. 608.

[57] 272 U. S. 425.

[58] Jackson, *An Organized American Bar*, 18 A. B. A. J. 383; Rutledge, *What Changed Conditions Must the Lawyer Face in the Practice of Law?*, 9 Am. L. School Rev. 1174.

[59] See Llewellyn, *The Bar's Troubles, and Poultices—and Cures?*, 5 Law and Contemp. Prob. 104, 107.

[60] *E. g.*, the Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927, 44 Stat. 1435, 33 U. S. C. § 919(d): "At such hearing the claimant and the employer may each present evidence in respect of such claim and may be represented by any person authorized in writing for such purpose."

The legislation establishing a Small Claims and Conciliation Branch in the Municipal Court of the District of Columbia provides in part that "The clerk of said branch shall, at the request of any individual, prepare the statement of claim and other papers required to be filed in an action in this branch. . . ." 52 Stat. 103, § 5(a); D. C. Code (1940) § 11-805(a).

See Eagle Indemnity Co. v. Industrial Accident Commission, 217 Cal. 244, 248, 18 P. (2d) 341, 343; Note, 22 Calif. L. Rev. 121; Robinson, *Appearances by Laymen in a Representative Capacity before Administrative Bodies*, 5 Law and Contemp. Prob. 89.

[61] *E. g.*, the Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927, 44 Stat. 1437, 33 U. S. C. § 923(a): "In making an investigation or inquiry or conducting a hearing the deputy commissioner shall not be bound by common law or statutory rules of evidence or by technical or formal rules of

There are some who regret and some who resent these changes. Over the years, as individuals and as members of professional associations, they have labored to prevent or minimize them. But they would not suggest that criminal conduct, as individuals or as associations, would be proper for such a purpose.

Professions exist because the people believe they will be better served by licensing especially prepared experts to minister to their needs.[62] The licensed monopolies which professions enjoy constitute, in themselves, severe restraints upon competition. But they are restraints which depend upon capacity and training, not special privilege. Neither do they justify concerted criminal action to prevent the people from developing new methods of serving their needs. There is sufficient historical evidence of professional inadequacy to justify occasional popular protests.[63] The better educated laity of today questions the adequacy of present-day medicine.[64] Their challenge finds support, as indicated in the margin, from substantial portions of the medical profession itself.[65] The people give the privilege of

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procedure, except as provided by this Act; but may make such investigation or inquiry or conduct such hearing in such manner as to best ascertain the rights of the parties."

In proceedings in the Small Claims and Conciliation Branch of the Municipal Court, "The judge shall conduct the trial in such manner as to do substantial justice between the parties according to the rules of substantive law, and shall not be bound by the statutory provisions or rules of practice, procedure, pleading, or evidence, except such provisions relating to privileged communications." 52 STAT. 105, § 8(b); D. C. CODE (1940) § 11-808(b).

[62] Alabama Power Co. v. Federal Power Commission, (No. 7853, decided March 30, 1942) — App. D. C. —, — F. (2d) —: " 'The grant of a license, being a privilege from the sovereign, can be justified only on the theory of resulting benefit to the public. . . .' "

[63] SHRYOCK, THE DEVELOPMENT OF MODERN MEDICINE (1936) 2: "When Rush died, in 1813, he was widely acclaimed the greatest physician his country had known. Three short decades passed, and an outstanding American physician of the next generation found himself revaluing Rush's medical essays. The results were rather startling. 'It may be safely said,' observed Elisha Bartlett in 1843, 'that in the whole vast compass of medical literature, there cannot be found an equal number of pages containing a greater amount and variety of utter nonsense and unqualified absurdity.' A more sudden and extreme revision of scientific opinion could hardly be imagined. Here was Rush lauded by one generation and repudiated by the next."

[64] SHRYOCK, *id.* at 371-372: "Hence there gradually evolved, in educated minds, a syllogism of some such form as this: Medical science can now prevent or cure certain major diseases. Many people continue to suffer from these very diseases. Ergo, medical science does not serve the people as it should. The most obvious explanation was to be found in the mounting costs of service. Here, again, it is to be noted that it was the very progress which physicians had made in science, which involved them in new difficulties in the practice of their art. Technical improvement led to simultaneous increase in the demand for medical services and in the price that must be paid for them. And so the more that people trusted medical aid, the less they could afford it. Here was a serious and unexpected impasse in the public relations of the profession."

[65] SHRYOCK, *id.* at 399-400: "In 1926 some fifteen leaders in medicine, public health, and the social sciences had inaugurated a series of conferences which led to the creation of a national Committee on the Costs of Medical Care. This body consisted of fifty members drawn from various interested groups ranging from private practitioners to economists. Dr. Ray Lyman Wilbur, Secretary of the Interior in President Hoover's cabinet, served as Chairman. . . . The Committee carried out a nation-wide survey of sickness and medical service among nearly nine thousand white families. Their reports revealed, by 1932, a direct correlation between income and all types of medical service; and tended in general to substantiate the claims made by the advocates of health insurance more than a

professional monopoly and the people may take it away. A highly regimented military profession under strict governmental control; a ministerial or religious profession, without uniform standards or licensure; a large group of highly trained persons who serve the people as experts in news collection and dissemination but who have never had professional standing, licensure or monopoly;[66] these are all examples of alternative methods which the people have used to develop and control their professional groups.

In some instances professional groups have been charged by legislative fiat with powers and duties concerning professional education, licensure, discipline, removal of licensees from practice, and other related subjects.[67] In such cases they act as agencies of government.

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decade before. The lowest income group (under $1,200 per year) received more of certain types of care—presumably due to charity services—than did the next two higher groups ($1,200 to $3,000); but in general these classes all received much less service than those whose incomes were above the last-named amount. Thus the group with the lowest amount of service received only 50 per cent as many days of hospitalization, and only 41 per cent as many medical calls as did the group with the highest amount of service. In every case, the latter was the highest income group. The highest group itself received less medical service than the standard which the majority of the Committee considered essential to good care."

The American Medical Association, it is true, disagrees with the conclusions of these eminent professionals. SHRYOCK, *id.* at 401: "Taking quite another view of the situation, the Bureau of Economics of the American Medical Association conducted an investigation which '. . . revealed the fact that there are few, if any, people in the United States really suffering from lack of medical care: . . .'"

[66] It is perhaps significant that in the latest professional development—radio broadcasting—increased emphasis has been placed on ruthless competition (Federal Communications Commission v. Sanders Brothers Radio Station, 309 U. S. 470) and governmental control. Federal Communications Act of 1934, 48 STAT. 1082-1087, 47 U. S. C. §§ 303(m), 304, 307(d), 309(b)(1), 311, 312(a)(b); *id.* 48 STAT. 1104, 47 U. S. C. §§ 606(c)(d), as amended by the Act of January 26, 1942, Public No. 413, 77th Cong., 2d Sess.

[67] *E.g.*, the Integrated Bar in the legal profession. The State Bar Act of South Dakota provides in part (South Dakota Laws 1931, c. 84, §§ 11, 13, 14 J. AM. JUD. SOC. 188, 189): "Section 11. Unlawful Practice of Law. After the organization of the State Bar has been accomplished, as provided by this act, the Supreme Court shall fix a date after which no person shall practice law in the State of South Dakota unless such person be a member of the State Bar in good standing. . . ."

"Section 13. Violation of Rules May Be Punished. The by-laws, rules and regulations, when adopted by the Bar Board, and when approved by the Supreme Court, shall be binding upon all members of the State Bar, and the wilful violation of any such rules and regulations by any member of the State Bar may be punished by suspension from the practice of law, for such period as may be determined by the Supreme Court under the same procedure as now provided by law for suspension of the right of attorneys to practice law in this state."

The State Bar Act of California provides in part (California Statutes 1927, c. 34, §§ 23, 24, 26): "Sec. 23. The board shall have power to aid in the advance of the science of jurisprudence and in the improvement of the administration of justice."

"Sec. 24. With the approval of the supreme court, and subject to the provisions of this act, the board shall have power to fix and determine the qualifications for admission to practice law in this state. . . ."

"Sec. 26. The board of governors shall have power, after a hearing for any of the causes set forth in the laws of the State of California warranting disbarment or suspension, to disbar members or to discipline them by reproval, public or private, or by suspension from practice, and the board shall have power to pass upon all petitions for reinstatement. . . ."

See Sayre, *Proposed Integration of the Bar in Iowa*, 17 IOWA L. REV. 50, 53, n. 5. For general discussion see *Report of the Special Committee on Incorporation of the Bar*, 11 MICH. STATE BAR JOURNAL 50*.

Although some similar delegations of power have been made to the organized medical profession,[68] there is no evidence of delegation of power to appellants, sufficient to authorize the conduct for which they have been convicted. In the absence thereof professional groups must abide by the general laws just as scrupulously as any private citizen or private corporation. It is in this setting that appellants were permitted to organize, to establish standards of professional conduct, to effect agreements for *self-discipline and control*. There is a very real difference between the use of such self-disciplines and an effort upon the part of such associations to destroy competing professional or business groups or organizations. Again, to use the analogy of the legal profession, the activities of the American Medical Association in the present case more nearly resemble the situation which would exist if the American Bar Association or one of the state associations should undertake to destroy, by methods of criminal conspiracy, business organizations which employ lawyers, such as automobile associations, collection agencies, bankers' associations and title and trust companies. It is true that they have attempted, by means of actions to forbid unlawful practice of the law and by efforts to secure legislation, thus to prevent activities which they regarded as encroachments upon the practice of law. Such actions at law and such efforts to secure enactment of legislation are equally available to appellants. But there is a clearly defined line of demarcation here which must be observed if the penalties of the Sherman Act are to be avoided. As we suggested in our earlier opinion, appellants have open to them always the safer and more kindly weapons of legitimate persuasion and reasoned argument,[69] as a means of preserving professional esprit de corps, winning public sentiment to their point of view or securing legislation.[70] But they have no license to commit crime. When they go so far as to impose unreasonable restraints, they become subject to the prohibition of the Sherman Act.[71] This, then, represents a limit to professional group activities. If it is desired to extend them beyond this point, legislation is required for that purpose. It may be desirable that this professional group shall be given such enlarged powers, but if so it will be necessary for the legislature to speak upon the subject rather than for the courts to recognize a privilege based upon preemption or usurpation.

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[68] *E.g.*, in Maryland the examination of applicants for licenses to practice is entrusted to a Board of Medical Examiners elected by the state medical society, the Medical and Chirurgical Faculty. Md. Code (1939) art. 43, § 117. The Board is charged to establish its own standard of requirements for examinations (*id.* § 120), and all licenses to practice are to have affixed the seal of the Medical and Chirurgical Faculty. *Id.* § 126.

The educational standards established by the American Medical Association for medical schools are sometimes given legislative recognition in statutes providing for the granting of certificates to practice to graduates of foreign schools which maintain such standards. Va. Code (1936) c. 68, § 1615(d).

The high standards adopted by the medical profession have also been recognized by state laws permitting the admission to practice of licentiates of the National Board of Medical Examiners. Md. Code (1939) art. 43, § 121; Ga. Code (1933) § 84-914. See 119 A. M. A. J. 178 (May 9, 1942).

[69] United States v. American Medical Ass'n., 72 App. D. C. 12, 21, 110 F. (2d) 703, 712, *cert. denied*, 310 U. S. 644.

[70] Henderson v. Knoxville, 57 Tenn. 477, 481, 9 S. W. (2d) 697, 698, 60 A. L. R. 652, 654.

[71] Sugar Institute, Inc. v. United States, 297 U. S. 553, 597-600.

The same general misconception seems to underlie appellants' effort to show absence of restraint by contending that Group Health Association is an illegal organization or that it is engaged in illegal activities. It is elementary that a person is not privileged to kill another simply because the latter is a bad man.[72] Neither can justification for the commission of a crime be found in the fact that its commission benefited the community; and evidence offered for such a purpose is properly excluded.[73] Nor is the fact that a crime was committed with the intent to accomplish some ultimate good, an excuse for its commission;[74] even if it was for the purpose of enforcing the law.[75]

The same rule applies in conspiracy cases as in criminal cases generally. Thus it was no defense to a charge of conspiracy to dynamite a man's house that the house was a disreputable resort, a place where moonshine whisky was sold and where lewd women congregated for unlawful purposes.[76] And the same rule applies in cases of conspiracy under the Sherman Act.[77] Neither the fact that the conspiracy may be intended to promote the public welfare,[78] or that of the industry,[79] nor the fact that it is designed to eliminate unfair, fraudulent and unlawful practices,[80] is sufficient to avoid the penalties of the Sherman Act.

Appellants are not law enforcement agencies; they are charged with no duties of investigating or prosecuting, to say nothing of convicting and punishing. They have been given no power to require their members, or Group Health Association, to reveal the intimate details of their affairs, as was attempted in the present case.[81] Except for

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[72] State v. Morrison, 121 S. C. 11, 113 S. E. 304.

[73] Respublica v. Caldwell, 1 Dall. [Pa.] 150.

[74] People ex rel. Hegeman v. Corrigan, 195 N. Y. 1, 13, 87 N. E. 792, 796: "So, ordinarily, a criminal intent is an intent to do knowingly and willfully that which is condemned as wrong by the law and common morality of the country, and if such an intent exists, it is neither justification nor excuse that the actor intended by its commission to accomplish some ultimate good. 1 Bishop's Crim. Law, § 341. . . . One may not commit a crime because he hopes or expects that good will come of it. It is no defense to a charge of intentionally committing an act prohibited by law even that the dictates of his religious belief require one to do the act."; Reynolds v. United States, 98 U. S. 145.

[75] Crawford v. Ferguson, 5 Okla. Cr. 377, 115 P. 278, 279-280: "A violation of law, when committed even for the purpose of enforcing the law, is not only illegal, but it is anarchy itself."; Hamp v. State, 19 Wyo. 377, 406, 118 P. 653, 662; Charge to the Grand Jury, Quincy [Mass.] 218, 221: "Levying War against the King is High Treason; as where People set about redressing public Wrongs; this, Gentlemen, the Law calls levying War against the King; because it is going in direct Opposition to the King's Authority, who is the Redresser of all Wrongs."

[76] Nails v. Commonwealth, 228 Ky. 838, 16 S. W. (2d) 474.

[77] Sugar Institute, Inc. v. United States, 297 U. S. 553, 599: "The freedom of concerted action to improve conditions has an obvious limitation. The end does not justify illegal means. The endeavor to put a stop to illicit practices must not itself become illicit. As the statute draws the line at unreasonable restraints, a cooperative endeavor which transgresses that line cannot justify itself by pointing to evils afflicting the industry or to a laudable purpose to remove them."; Paramount Famous Lasky Corp. v. United States, 282 U. S. 30, 44.

[78] Eastern States Retail Lumber Dealers' Ass'n. v. United States, 234 U. S. 600, 613.

[79] Paramount Famous Lasky Corp. v. United States, 282 U. S. 30, 43; United States v. First National Pictures, Inc., 282 U. S. 44.

[80] Fashion Originators' Guild of America, Inc. v. Federal Trade Commission, 312 U. S. 457, 468.

[81] United States v. American Linseed Oil Co., 262 U. S. [illegible], 389.

their size, their prestige and their otherwise commendable activities, their conduct in the present case differs not at all from that of any other extra-governmental agency which assumes power to challenge alleged wrongdoing by taking the law into its own hands.[82] Although extreme situations may seem sometimes to have required vigilante action where effective law enforcement by duly constituted officers had broken down or never been established,[83] and although persons who reason superficially concerning such matters may find justification for extra-legal action to secure what seems to them desirable ends; this is not the American way of life.[84] If Group Health Association is illegal, or is engaged in illegal activities, there is a method provided by law to determine the facts and to secure appropriate action.[85] If further controls are needed in addition to those now available, the legislative method is the appropriate one to secure the desired end.

The Government offered evidence that in various instances, over a period of years preceding the indictment, the American Medical Association induced various hospitals to exclude physicians from their staffs because of the physicians' connection with various low-cost, risk-sharing or prepayment plans for medical services. Appellants contend that this evidence was not the type of background evidence approved by our decision in *United States* v. *American Medical Association*.[86] Specifically, they object that the Government did not present in detail the nature of the various plans which the Association thus allegedly sought to thwart and that the action of the Association is equivocal, hence as consistent with the enforcement of legitimate ethical standards as with a policy of discouragement of low-cost or risk-sharing or prepayment plans. It is true that in each instance

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[82] Fashion Originators' Guild of America, Inc. v. Federal Trade Commission, 312 U. S. 457, 465-466: "In addition to all this, the combination is in reality an extra-governmental agency, which prescribes rules for the regulation and restraint of interstate commerce, and provides extra-judicial tribunals for determination and punishment of violations, and thus 'trenches upon the power of the national legislature and violates the statute.' *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211, 242."

[83] 23 ENCYC. BRIT. 146. See Denver and Rio Grande Ry. v. Harris, 122 U. S. 597, 606; Boyle v. Case, D. Ore., 18 F. 880, 883-885; Sanders v. Gilbert, 156 N. C. 463, 481, 72 S. E. 610, 617.

[84] Charles Evans Hughes, 18 PROC. OF AM. LAW INST. (1941) 24, 29: "Democracy cannot escape its pressure groups. Each interest has its imperious demands. These groups compete in the market place, in the forums of public opinion, in popular elections, and in our legislative halls, but they have no place in the halls of judicial administration. The lamps of justice are dimmed or have wholly gone out in many parts of the earth, but these lights are still shining brightly here. We are engaged in harnessing our national power for the defense of our way of life. But that way is worthwhile only because it is the pathway of the just. It is our high privilege, although our task may seem prosaic, to strengthen the defenses of democracy by commending to public confidence and esteem the working of the institutions of justice in both state and nation."; Note, 2 GEO. WASH. L. REV. 498.

[85] D. C. CODE (1940) §§ 2-101, 2-102, 2-130, 2-132, 2-137, 29-719, 29-725, 35-1347. Proceedings instituted by Group Health Association have established that its activities do not violate the insurance laws of the District of Columbia. Jordan v. Group Health Ass'n., 71 App. D. C. 38, 107 F. (2d) 239. The decision of the District Court included a finding that Group Health's activities do not violate the Healing Arts Practice Act of the District of Columbia. Group Health Ass'n. v. Moor, D. C., 24 F. Supp. 445, 446-447. This part of the judgment was not appealed. Jordan v. Group Health Ass'n., 71 App. D. C. 38, 39, 107 F. (2d) 239, 240.

[86] 72 App. D. C. 12, 110 F. (2d) 703, *cert. denied*, 310 U. S. 644.

the nature of the plan was not greatly detailed, though the Government's first witness gave a description of prepayment plans in general and described several then in operation, including at least two which were objects of opposition by the Association. We think it was sufficiently shown that these various plans all involved the common element of low cost, and that the attitude of the Association toward each was hostile.[87] This evidence was admissible as bearing on the intent of the Association in respect of the actions which are the subject matter of the indictment.[88] Even assuming that this evidence may have

[87] For example, in 1936, the State Medical Society of Wisconsin disapproved a plan proposed for the care of employees of the International Harvester Company. The proponents of this plan, who were members of the State Society, refused to resign, and were subsequently tried, found guilty and expelled from the Society on the ground of violations of the By-Laws of the Society and the Principles of Medical Ethics. The expelled members appealed to the Judicial Council of the American Medical Association, which affirmed the action of the State Society. As appears from the opinion of the Judicial Council, the features of the plan were as follows: "1. Unlimited medical and surgical service for $1.00 per month for a single man; $2.00 per month for man and wife; $3.00 per month for man, wife and family. 2. Only diseases excluded from the plan—mental and contagious. Hospitalization not included. 3. There would be no solicitation of patients. 4. All physicians who joined the clinic would benefit from any profits. 5. Patients may select any physician on the staff. 6. Preventive treatment not included in the plan. 7. No written contract between patient and clinic. Participants in plan restricted to those with income of $200.00 or less per month."

The opinion of the Judicial Council also stated that: "The Judicial Council is distinctly of the opinion that practice under the terms and conditions to which these appellants have agreed with the employees of the International Harvester Company constitutes a violation of Chapter III, Art. VI, (Revised) Sec. 3, of the Principles of Medical Ethics (contract practice contrary to sound public policy)."

In the meantime and following the action of the State Society, Dr. Cutter, Secretary of the Association, had written the Superintendent of Mount Sinai Hospital, Milwaukee, Wisconsin, in the following language: "It has come to our attention, through correspondence with the Medical Society of Milwaukee County, that certain physicians have been expelled from that society through participation in an organization known as 'Milwaukee Medical Center.' It is also reported that certain of these same individuals continue as members of your attending staff with hospital privileges. May we call your attention to the recent resolution passed by the House of Delegates of the American Medical Association, as follows: 'Resolved, That it is the opinion of the House of Delegates of the American Medical Association that physicians on the staffs of hospitals approved for intern training by the Council on Medical Education and Hospitals should be limited to members in good standing of their local county medical societies and that the House of Delegates requests the Council on Medical Education and Hospitals to take this under advisement.' What possibility, if any, exists for observance of the principle laid down in this resolution?"

After a series of temporizing correspondence, Dr. Cutter again addressed the Superintendent of Mount Sinai Hospital as follows: "In view of the fact that we have received no reply to our letter of May 5 and no notification of any action taken with respect to the employment of physicians expelled from the county medical society, we wish to inform you that we are recommending to the Council that Mount Sinai Hospital be removed from the approved intern list and also from the the Register of the American Medical Association."

One week later the Superintendent of Mount Sinai Hospital wrote Dr. Cutter that the objectionable physicians had been denied further staff and courtesy privileges at Mount Sinai Hospital by vote of the Executive Committee.

[88] Chicago Board of Trade v. United States, 246 U. S. 231, 238; Standard Oil Co. v. United States, 221 U. S. 1, 46-47, 75-77; Heike v. United States, 227 U. S. 131, 145; Baush Machine Tool Co. v. Aluminum Co. of America, 2 Cir., 72 F. (2d) 236, 239, *cert. denied*, 293 U. S. 589; Patterson v. United States, 6 Cir., 222 F. 599, 629-630, *cert. denied*, 238 U. S. 635; United States v. Lake Shore & M. S. Ry., S. D. Ohio, 203 F. 295, 307, *appeal dismissed*, 241 U. S. 691; United States v. E. I. Du Pont de Nemours & Co., D. Del., 188 F. 127, 134.

been relevant only in respect of the American Medical Association and that it was introduced for that purpose by the Government, nevertheless, as appellants sought only to exclude it entirely, rather than merely to limit its probative force, there was, consequently, no error in admitting it,[89] in any event.

Appellants contend further, in this connection, that: "A misdemeanor such as described in Section 3 of the Sherman Act is not a violation of the law in Texas, Wisconsin, or any other state of the United States. A restraint of intrastate trade in Texas or Wisconsin is not a violation of any law of the United States, and so far as this record discloses, of any state law. Every man has a right to do it, and no finger of scorn is to be pointed at him for doing it. To permit the Government to prove in a case pending in the District of Columbia lawful acts that were performed by the defendant AMA in Texas and Wisconsin is error." But as applied to the present case the premise is incorrect and the conclusion does not follow. In the first place, it is elementary that if the object of a conspiracy is criminal, then evidence of conduct—otherwise lawful—but which is intended to achieve that criminal objective may properly be received to prove the conspiracy.[90] In the second place, whether the particular conduct was criminal at the time and place where it occurred is beside the point. Evidence has been admitted to prove background, even though it concerned conduct which occurred prior to adoption of the act under which the indictment was found;[91] as well as concerning conduct which occurred before the date in the indictment when it was alleged that the accused persons conspired.[92] The disputed evidence in the present case was not offered to prove the commission of crimes in Texas, Wisconsin, or other states, but to prove the commission of a crime in the District of Columbia, by proving the background of appellant's conduct in the District of Columbia. What it did in the District was part of a larger plan. Evidence of conduct in other states—which may have been perfectly lawful according to the laws in force in those states—was nevertheless proof of appellant's intent and purpose in acting as it did in the District.[93] The cases relied upon by appellants require no other conclusion. One of them is not in point and in both of the others all the acts complained of were committed outside the

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[89] Greater New York Live Poultry Chamber of Commerce v. United States, 2 Cir., 47 F. (2d) 156, 159, *cert. denied*, 283 U. S. 837.

[90] Aikens v. Wisconsin, 195 U. S. 194, 206; Swift and Co. v. United States, 196 U. S. 375, 396; Badders v. United States, 240 U. S. 391, 394; Duplex Printing Press Co. v. Deering, 254 U. S. 443, 465; Falstaff Brewing Corp. v. Iowa Fruit & Produce Co., 8 Cir., 112 F. (2d) 101, 108; Lynch v. Magnavox Co., 9 Cir., 94 F. (2d) 883, 889; Marino v. United States, 9 Cir., 91 F. (2d) 691, 694, *cert. denied*, 302 U. S. 764.

[91] Standard Oil Co. v. United States, 221 U. S. 1, 46-47: " . . . it tended to throw light upon the acts done after the passage of the Anti-trust Act and the results of which it was charged were being participated in and enjoyed by the alleged combination at the time of the filing of the bill."

[92] Heike v. United States, 227 U. S. 131, 145: "The longer it had lasted the greater the probability that he knew of it and that his acts that helped it were done with knowledge of their effect."; Bausch Machine Tool Co. v. Aluminum Co. of America, 2 Cir., 72 F. (2d) 236, 239, *cert. denied*, 293 U. S. 589; Wilson v. United States, 6 Cir., 109 F. (2d) 895.

[93] See Greater New York Live Poultry Chamber of Commerce v. United States, 2 Cir., 47 F. (2d) 156, 159, *cert. denied*, 283 U. S. 837.

United States.[94] In *Eastern States Petroleum Co., Inc.* v. *Asiatic Petroleum Corp.*, Judge Chase, speaking for the Second Circuit Court of Appeals, put the case in a nutshell when he said: "Likewise, what was done wholly abroad *unaided by acts in this country* must be counted out."[95] [Italics supplied]

Appellants contend that the verdict of the jury acquitting all the defendants except the American Medical Association and the Medical Society of the District of Columbia, and convicting the two latter associations, constitutes such inconsistency as to require that the verdicts of guilty be set aside. It has been held many times that inconsistency in verdicts does not require the result contended for by appellants.[96] And this is true even though the inconsistency can be explained by no rational considerations.[97] The question for us is whether the conviction is consistent with the evidence.[98]. Complete identity of participation in the conspiracy was not necessary upon the part of the participants, either in fact or in law. While such complete identity is not necessary in order to sustain a verdict when several persons jointly tried are convicted,[99] lack of it may be enough to explain away a supposed inconsistency when some are acquitted and others convicted. Thus in *American Socialist Soc.* v. *United States*, the court said: "The last objection is that the judgment should be reversed, because, if the author of the pamphlet was not guilty, the publishers could not be guilty. It is said that Nearing must have been acquitted on one of two grounds, viz. either that the pamphlet itself was innocuous or that he had no intent to obstruct the recruiting and enlistment service of the United States. If the acquittal of Nearing was on the first ground, the society ought also to have been acquitted. We are therefore justified in finding that the acquittal was on the second ground. The statute, in defining the offense, imposes the additional condition that the act shall be done with the specific intent of obstructing the recruiting and enlistment service of the United States. The jury might believe that Nearing did not write these harmful views with the intent of obstructing the recruiting and enlistment service of the United States, and at the same time believe that the Society did print and distribute them with that intent. Such findings would not be inconsistent. This is a matter of fact, of which the jury are the sole judges, and with it we have no concern."[100]

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[94] American Banana Co. v. United Fruit Co., 213 U. S. 347, 357; Eastern States Petroleum Co., Inc. v. Asiatic Petroleum Corp., 2 Cir., 103 F. (2d) 315, 319.

[95] *Ibid.*

[96] United States v. General Motors Corp., 7 Cir., 121 F. (2d) 376, 411, *cert. denied*, 314 U. S. 618; Bryant v. United States, 5 Cir., 120 F. (2d) 483, 485; Dunn v. United States, 284 U. S. 390, 393; Steckler v. United States, 2 Cir., 7 F. (2d) 59, 60; United States v. Austin-Bagley Corp., 2 Cir., 31 F. (2d) 229, 233, *cert. denied*, 279 U. S. 863; Crichton v. United States, 67 App. D. C. 300, 303, 92 F. (2d) 224, 227, *cert. denied*, 302 U. S. 702. See United States v. Bergdoll, E. D. Pa., 272 F. 498, 505, *cert. denied*, 59 U. S. 585.

[97] United States v. Austin-Bagley Corp., 2 Cir., 31 F. (2d) 229, 233, *cert. denied*, 279 U. S. 863.

[98] United States v. General Motors Corp., 7 Cir., 121 F. (2d) 376, 411, *cert. denied*, 314 U. S. 618.

[99] McCandless v. Furland, 296 U. S. 140, 165; United States v. Anderson, 7 Cir., 101 F. (2d) 325, 332-333, *cert. denied*, 307 U. S. 625; THORNTON, COMBINATIONS IN RESTRAINT OF TRADE (1928) §§ 211, 454.

[100] 2 Cir., 266 F. 212, 214, *cert. denied*, 254 U. S. 637.

Appellants' contention confuses the concepts of corporate and individual criminal liability. When a corporation is guilty of crime it is because of a corporate act, a corporate intent; in short, corporate commission of crime.[101] The fact that a corporation can act only by human agents is immaterial.[102] How separate is the identity of the corporate person and the individual person, where criminal liability is concerned, is shown by the fact that a corporation may be found guilty of a crime, the essential element of which is a specific criminal intent.[103] This has been often held in conspiracy cases.[104] In at least one state it has been held that the corporation and its agents may be separately counted in order to find the two or more persons necessary for the commission of a conspiracy.[105] In the present case a large number of individuals were named as defendants; some of whom were agents of appellants, others who were not. Moreover, as the two corporations were convicted, the requirement of two persons is satisfied in any event. Consequently, for both reasons, the conviction of appellants does not depend upon the guilt or conviction of their agents.

We have carefully examined appellants' other contentions and find them to be without merit. As we read the record the case was tried carefully and fairly; the jury was properly instructed; and the evidence was adequate to support the verdicts.

Affirmed.

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[101] United States v. Union Supply Co., 215 U. S. 50.

[102] United States v. General Motors Corp., 7 Cir., 121 F. (2d) 376, 411, *cert. denied*, 314 U. S. 618; United States v. Austin-Bagley Corp., 2 Cir., 31 F. (2d) 229, *cert. denied*, 279 U. S. 863.

[103] American Socialist Soc. v. United States, 2 Cir., 266 F. 212, 214, *cert. denied*, 254 U. S. 637.

[104] Joplin Mercantile Co. v. United States, 8 Cir., 213 F. 926, 935-936, *aff'd*, 236 U. S. 531; Note, Ann. Cas. 1916C 459; United States v. MacAndrews & Forbes Co., C. C. S. D. N. Y., 149 F. 823, 835-836, *error dismissed*, 212 U. S. 585; People v. Dunbar Contracting Co., 165 App. Div. 59, 61, 151 N. Y. S. 164, 166, *aff'd*, 215 N. Y. 416, 109 N. E. 554; State v. Eastern Coal Co., 29 R. I. 254, 268, 70 A. 1, 7; Minnsohn v. United States, 3 Cir., 101 F. (2d) 477, 478.

[105] Standa. l Oil Co. v. State, 117 Tenn. 618, 667, 100 S. W. 705, 718, 10 L. R. A. (N. S.) 1015.

[fol. 1910] Monday, June 15th, A. D. 1942.

Before the Honorable Justin Miller and Wiley Rutledge, Associate Justices, and the Honorable George E. Martin, Chief Justice, retired, designated to sit in this case:

No. 7929, April Term, 1942

AMERICAN MEDICAL ASSOCIATION, a Corporation, Appellant,

vs.

UNITED STATES OF AMERICA

Appeal from the District Court of the United States for the District of Columbia

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed.

Per Mr. Justice Miller.

June 15, 1942.

[fol. 1911] Monday, June 15th, A. D. 1942.

Before the Honorable Justin Miller and Wiley Rutledge, Associate Justices, and the Honorable George E. Martin, Chief Justice, retired, designated to sit in this case.

No. 7930, April Term, 1942

MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA, a Corporation, Appellant,

vs.

UNITED STATES OF AMERICA

Appeal from the District Court of the United States for the District of Columbia

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed.

Per Mr. Justice Miller.

June 15, 1942.

[fol. 1912] [Stamp:] United States Court of Appeals for the District of Columbia. Filed Jun. 18, 1942. Joseph W. Stewart, Clerk

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, APRIL TERM, 1941

Special Calendar

No. 7929

AMERICAN MEDICAL ASSOCIATION, a Corporation, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee

No. 7930

THE MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA, a Corporation, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee

DESIGNATION OF RECORD ON APPLICATION FOR CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

The Clerk will please prepare a transcript on application for Certiorari to the Supreme Court of the United States in the above-entitled consolidated cause, including therein the following:

1. The printed record in the Court of Appeals, as amended.
2. Order of Consolidation.
2½. Stipulation filed October 17, 1941.
3. Minute entries showing argument of the cause.

4. The Opinion of the Court of Appeals filed June 15, 1942.
5. Judgment of the Court of Appeals in the cause.
6. This Designation of Record.
7. The Clerk's Certificate.

Edward M. Burke, William E. Leahy, Seth W. Richardson, Charles S. Baker, Warren E. Magee, Attorneys for Appellants.

[fol. 1913] Service

Service of a copy of the foregoing Designation of Record is hereby acknowledged on the 18th day of June, 1942.

John Henry Lewin, Of Counsel for Appellee.

Clerk's Certificates to foregoing transcript omitted in printing.

[fol. 1914] Supreme Court of the United States, October Term, 1942

No. 201

Order Allowing Certiorari—Filed October 12, 1942

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted, limited to the first three questions presented by the petition.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 1915] Supreme Court of the United States, October Term, 1942

No. 202

Order Allowing Certiorari—Filed October 12, 1942

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted, limited to the first three questions presented by

FILE COPY

Office - Supreme Court, U. S.
FILED
JUL 3 1942
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1941

No. 201

AMERICAN MEDICAL ASSOCIATION, a Corporation, *Petitioner*,

vs.

UNITED STATES OF AMERICA, *Respondent*.

No. 202

THE MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA, a Corporation, *Petitioner*,

vs.

UNITED STATES OF AMERICA, *Respondent*.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA AND SUPPORTING BRIEF.

EDWARD M. BURKE,
WILLIAM E. LEAHY,
SETH W. RICHARDSON,
CHARLES S. BAKER,
WARREN E. MAGEE,
Attorneys for Petitioners.

PRESS OF JUDD & DETWEILER, INC., WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

October Term, 1941

No. .....

AMERICAN MEDICAL ASSOCIATION, a Corporation, *Petitioner*,

vs.

UNITED STATES OF AMERICA, *Respondent*.

No. .....

THE MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA, a Corporation, *Petitioner*,

vs.

UNITED STATES OF AMERICA, *Respondent*.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

American Medical Association,[1] a corporation, and The Medical Society of the District of Columbia,[2] a corporation, petitioners, respectfully pray for writs of certiorari to re-

[1] Hereinafter referred to as AMA.
[2] Hereinafter referred to as DMS.

view the decision and judgments of the United States Court of Appeals for the District of Columbia, entered June 15, 1942 (R. 1886, 1908, 1909), affirming the judgments of the District Court of the United States for the District of Columbia, entered May 29, 1941, on the verdict of a jury finding petitioners guilty on an indictment charging a conspiracy for the purpose of restraining trade in the District of Columbia in violation of Section 3 of the Sherman Act.[3]

SUMMARY STATEMENT.

The record in this case presents the basis for at least half a dozen ordinary cases, each presenting novel propositions of the utmost importance. We have made every effort to limit the length of this petition and brief consistent with giving the Court an understanding of the numerous issues involved and the law applicable thereto.

The indictment charges (R. 14, 15) petitioners with engaging in a conspiracy to restrain Group Health Association, Inc.,[4] a corporation, in furnishing through monthly salaried full-time employee-doctors, medical care to its members and their dependents; to restrain members of GHA in obtaining such medical care; to restrain GHA doctors; to restrain other doctors in the pursuit of their callings; and to restrain the Washington hospitals.

Petitioners contend that the indictment did not charge nor the proof show an offense under the Sherman Act for three basic reasons, any one of which is fatal to this prosecution.

First: because the activities alleged to have been restrained were not commercial, and hence not trade just as this Court held in *Atlantic Cleaners & Dyers* v. *United States*, 286 U. S. 427, 436, *Federal Club* v. *National League*,

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[3] Appendix, p. 55 *infra*.

[4] Hereinafter referred to as GHA.

259 U. S. 200, 209, and *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 493 (footnote 15), and the cases following it.

Second: because the indictment does not charge (despite the inference to the contrary in the decision below), nor the proof show that the alleged restraints affected the market, either by fixing prices or suppressing competition to the extent that prices were substantially affected, to the injury of the public. Such allegations and proof were necessary under the *Apex* case and the cases following it.

Third: because the alleged restraint arose out of a controversy concerning terms and conditions of employment of doctors, which, if doctors are tradesmen, was within the excluding purview of the Clayton[5] and Norris-LaGuardia[6] Acts as construed in *United States* v. *Hutcheson*, 312 U. S. 219, and the cases following it.

Petitioners also contend that GHA was practicing medicine illegally and otherwise violating Federal statutes, hence the alleged restraints against such activities would not violate the Act; that there was no evidence to support the charge; that when the verdict of the jury found all of the individual defendants not guilty, who could have been agents of or co-conspirators with corporate petitioners, there was no evidence left to support the verdict; that the court admitted improper evidence against both petitioners, including so-called "background evidence" of the actions of AMA only, at various places outside the District of Columbia long prior to the beginning of the alleged conspiracy to show that the purpose and intent of petitioners was as charged, and rejected the same kind of evidence offered by petitioners as to activities of GHA within the District during the period of the alleged conspiracy to show that the

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[5] Appendix, pp. 55, 56 *infra*.

[6] Appendix, pp. 56-59 *infra*.

purpose and intent of petitioners was not as charged. The court also incorrectly instructed the jury.

The Court of Appeals in its second opinion affirmed its first opinion and held that the word "trade" as used in the Sherman Act included the practice of medicine, its availability and financing, on the erroneous premise that the practice of medicine was recognized by the English cases as a trade, and therefore it was immaterial under the Sherman Act whether the practice of medicine and the rendering of medical services was or was not a commercial activity.

The Court of Appeals ignored the fact that the indictment did not allege nor the evidence prove that the activities of petitioners were exercised or used in such a way as to affect the market either by fixing prices or suppressing competition to the extent that prices were substantially affected, to the injury of the public, and held, regardless of the limitations of the indictment, that if a conspira[illegible] was shown, the purpose of which was to restrain competition by injuring GHA, it was sufficient to support the conviction. The error of this holding is two-fold. First, there was no such charge in the indictment but on the contrary the indictment proceeded upon the theory that the Sherman Act was a broad, remedial statute protecting every person individually in his occupation from any restraint. Second, even if such a charge were contained in the indictment, under the *Apex* case and the concurring opinion of Stone, C. J., in the *Hutcheson* case (pp. 241, 242), it would not charge a violation of the Act.

The court below held that physicians are in trade but that their associations, even though involved in a dispute over employment, are not within the protection of the Clayton and Norris-LaGuardia Acts because, the court asserted, physicians are not laborers who work for wages. The Court seems to have overlooked the fact that the cases which it

cited to support this premise, hold that professional activities are not commercial and not in trade.

The court below in its first opinion, based on the allegations of the indictment, held that GHA was not practicing medicine illegally or otherwise violating Federal statutes and in its second opinion held those facts were immaterial and inadmissible in evidence.

The court below held that there was evidence to support the charge and that the verdict finding the corporate petitioners guilty is sufficiently supported even though all the individual defendants were found "not guilty" and there was no evidence tending to show that any person other than the individual defendants was an agent of corporate petitioners or a co-conspirator, and held that a corporation can have a specific criminal intent without the intervention of any human person (R. 1907).

The court below held that the so-called "background" evidence offered by the Government pertaining to the activities of AMA outside the District long before the beginning of the alleged conspiracy was admissible against both petitioners on the theory that it was evidence of intent or purpose of petitioners, but rejected similar evidence offered by petitioners pertaining to the activities of GHA within the District and during the period of the alleged conspiracy to show that the intent or purpose of petitioners was not to restrain GHA but to defend their medical societies and their lawful principles of ethics, rules and regulations. The court held that even if petitioners' intent and purpose was a reasonable regulation of their members in the practice of medicine, that fact was no defense, if their actions adversely affected GHA.

The Court of Appeals without discussion as to what evidence tended to support the verdict, or what petitioners did that constituted conspiracy to violate the Sherman Act, repeatedly stated that petitioners' acts were criminal and

held that the evidence was adequate to support the verdict, and, without stating the substance of any of the instructions complained of, held that the jury was properly instructed.

This case presents a controversy relating to and growing out of the terms and conditions of employment of doctors in the medical profession.[7] AMA, the national organization, DMS, the local organization, and the doctors who are members of these organizations have long observed and followed a code of professional ethics and this code has been supplemented by association rules and regulations initiated by and agreed to by the members themselves and made, by them, a necessary condition of membership in their medical organizations.

GHA, incorporated under a non-commercial District statute,[8] sought to engage in the practice of medicine by the device of opening a clinic, including offices for a staff of doctors, whom it employed by the month, on a full-time salary basis. This arrangement, it was generally believed by petitioners, as well as by the law enforcement authorities of the District, was illegal.

Although many doctors who were not members of petitioners were available to GHA, that corporation, despite

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[7] Previous to this prosecution the courts of this country had held, without dissent, that the enforcement of rules and regulations of medical societies or hospitals does not create causes of action, legal or equitable. *Bryant* v. *District of Columbia Dental Society*, 26 App. D. C. 461; *Newton* v. *Board of Commissioners*, 86 Colo. 446, 282 P. 1068; *Olander* v. *Johnson*, 258 Ill. App. 89; *Irwin* v. *Lorio*, 169 La. 1090, 126 S. 669; *McDonald* v. *Massachusetts General Hospital*, 120 Mass. 432; *Weyrens* v. *Scotts Bluff County Medical Society*, 133 Neb. 814, 277 N. W. 378; *Branagan* v. *Buckman*, 67 Misc. 242, 122 N. Y. S. 610, affirmed 130 N. Y. S. 1106; *Strauss* v. *Marlboro County General Hospital*, 185 S. C. 425, 194 S. E. 65; *Harris* v. *Thomas* (Tex. Civ. App.), 217 S. W. 1068; *Porter* v. *King County Medical Society*, 186 Wash. 410, 58 P. (2d) 367.

[8] Act of March 3, 1901, c. 854 (31 Stat. 1283) D. C. Code, 1940, Title 29, Sections 29-601 to 29-605, for the incorporation of charitable, educational and religious associations.

full knowledge of the principles of ethics and the rules and regulations governing the professional activities of petitioners' members, willfully sought to induce certain doctors who were members of petitioners, to ignore and violate their medical society obligations and accept employment on the GHA hired staff.

Apprehensive of impending controversy, members of DMS immediately sought both by individual and group conferences, to persuade GHA, in its employment of doctors who were medical society members, to make some effort to conform to the principles of ethics, and the employment rules and regulations of DMS. These overtures were flatly rejected by GHA and it persisted in endeavoring to proselyte petitioners' members, to induce them to ignore medical association rules, and to create controversies between such members and petitioners. The controversy here involved followed. To acquaint its members with the facts, the AMA published in its Journal an article that was critical of GHA. Two of the doctors employed by GHA were members of DMS. DMS had a provision in its constitution that any of its members accepting contracts of employment must submit such contracts for approval to a committee of DMS. The two doctors, under the urging of GHA, refused to do so, and after a full hearing, one of them was expelled from DMS.

The Government contended that petitioners intended to restrain GHA and its employee-doctors and members; whereas petitioners asserted they intended only to preserve, protect, and to defend their medical societies, their principles of ethics, rules and regulations, from impairment and destruction.

The petitioners were also charged with restraining the Washington hospitals. In 1934, AMA adopted the Mundt

Resolution [9] which was thereafter transmitted to intern and resident hospitals. Several of the local hospitals already had such a rule. No hospital was ever required as a condition of approval, to confine its staffs to society members. An inspection of local hospitals, had in the summer of 1937, far from being a part of an aim to restrain GHA, was, under the uncontradicted evidence, solicited by the hospitals and carried out on behalf of AMA by persons who had no knowledge of the existence of GHA.

Obviously, membership in the medical societies aided and advanced the general professional welfare of members, and, as conceded in the indictment, became of importance and value to conforming members. GHA, while insisting upon the right of its employed doctors to retain society membership, nevertheless proposed that observance of society codes, rules and regulations could be ignored, at the will of a particular member, without loss of society membership and that any attempt on the part of the society to require conformance with such rules operated as an illegal restraint of the member as well as of his employer, GHA.

Obviously, such a controversy threatened the continued welfare and existence of petitioners and made everything relating to GHA's terms and conditions of employing petitioners' members, of interest to petitioners, particularly in so far as petitioners' codes, rules and regulations might be violated. If GHA was operating in violation of Federal statutes and its activities presented an illegal, unethical, or unprofessional operation, if it was engaged in questionable practices which appeared to be inimicable to the best interests of either the public, the medical profession, or the petitioners or their members, then petitioners owed its mem-

[9] Resolved that it is the opinion of the House of Delegates of the American Medical Association that physicians on the staffs of hospitals approved for intern training by the Council on Medical Education and Hospitals be limited to members in good standing of their local county medical societies and that the House of Delegates requests the Council on Medical Education and Hospitals to take this under advisement.

bers, to say nothing of the public, the duty of opposing, avoiding and preventing the injury to petitioners, and their members, through the proselyting tactics of GHA. The court below said physicians may organize, establish standards of professional conduct and effect agreements for self-discipline and control, but in the same breath said that if such standards and agreements are enforced and some other professional or business group are injured the Sherman Act is violated.

As the hospitals might well be considered the workshop of physicians, legitimate persuasion and reasoned argument might lawfully be directed toward the hospitals, recommending preference to organization members whose codes, rules and regulations were known and established, as against others not so well recommended. That could not possibly amount to criminal restraint of GHA under the Sherman Act. The court below said petitioners might use legitimate persuasion and reasoned argument as a means of winning public sentiment to their point of view but in the same breath said that when they so persuade and argue with the hospitals or when petitioners' members persuade and argue among themselves, they violate the Sherman Act.

Out of this controversy came the indictment wherein 21 doctors [10] and four medical associations [11] were indicted.

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[10] Dr. Olin West was Secretary and General Manager of AMA. Dr. Morris Fishbein was Editor of the Journal of the AMA. Dr. William Creighton Woodward was Director of the Bureau of Legal Medicine and Legislation of the AMA. Dr. William Dick Cutter was Secretary of the Council on Medical Education and Hospitals of the AMA. Dr. Roscoe Genung Leland was Director of the Bureau of Economics of AMA. Dr. Thomas Edwin Neill was President of the DMS. Dr. Coursen Baxter Conklin was Secretary-Treasurer of the DMS. All the other individual defendants were physicians and members of the DMS or members of some committee thereof, or were on the regular staff of some of the Washington hospitals during all or part of the period of the alleged conspiracy.

[11] American Medical Association, Medical Society of the District of Columbia, Washington Academy of Surgery, and Harris County (Texas) Medical Society.

A demurrer to the indictment, particularly upon the ground of inapplicability of the Sherman Act, was sustained by the District Court (28 F. Supp. 752). The Court of Appeals reversed, holding that the Act was a broad remedial statute, intended to protect all individuals in all occupations, professional or commercial, and any restraint upon an individual is prohibited by the Act. The opinion did not even contend the indictment charged that competition was suppressed to the extent that market prices were affected. The case thereafter was tried upon the law laid down by the Court of Appeals. Upon the trial, two individual defendants and two defendant associations were discharged by directed verdict. Motions to direct verdicts for each defendant, at the close of all the evidence, were denied. Of the remaining defendants, all the individual defendants were acquitted, and only the corporate petitioners were convicted. After verdict petitioners moved the court to disregard all the evidence pertaining to the acts and doings of the individual defendants found "not guilty" and to enter a judgment for the corporate petitioners notwithstanding the verdict, and also moved the court in arrest of judgment and for a new trial. These motions were denied.

Furthermore, the indictment itself, a calculated, colored, argumentative appeal to passion and prejudice, and so characterized by the District Court upon demurrer (28 F. Supp. 752), was permitted to go to the jury in spite of timely objections by petitioners.

The court admitted in evidence, over objections, so-called "background" evidence offered by the prosecution against both petitioners which concerned many acts of AMA, long antedating the conspiracy here alleged, neither involving nor relating to nor within the knowledge of DMS. Nor did such acts occur in the District nor were they involved in the conspiracy here pleaded. Nor did they have reference to other plans and types of medical service shown to be the same as or analogous to that followed by GHA. Nor

were the objections urged against GHA, shown to be present elsewhere. This evidence was offered upon the theory that since the Government alleged that AMA had opposed all medical service plans, *ipso facto*, it was probable that it had opposed GHA in the present controversy. Obviously, such proof was exceedingly prejudicial to both petitioners and particularly to the local society, but it was admitted upon the authority of the Court of Appeals' first opinion which, in turn, was based upon *Chicago Board of Trade* v. *United States*, 246 U. S. 231, 238, which clearly, upon examination seems wholly irrelevant.[12] The conviction of petitioners might well have resulted from the admission of this irrelevant evidence alone.

Notwithstanding the fact that the court admitted the aforesaid "background" evidence against both petitioners to show purpose and intent, it rejected similar evidence offered by petitioners to show the activities of GHA within the District during the indictment period for the purpose of showing that the acts of petitioners were not for the purpose or intent of restraining GHA but to protect their medical societies, their principles of medical ethics, rules and regulations, and to reasonably regulate their own members. The indictment, in innumerable instances, charged that the acts done by the petitioners were done "for the purpose of" restraining GHA, etc., and the Government continually so asserted throughout the trial and the argument. Upon the trial the petitioners claimed, and offered to prove, that the acts of the petitioners were wholly defensive, and were based upon the known, or believed, unfit, unethical and illegal nature and conduct of GHA. The petitioners offered to prove such acts and conduct and what the public authorities specifically publicly charged concerning GHA's illegal activities, for the purpose of

[12] The court below, in its second opinion, again cited (R. 1904) the *Chicago Board of Trade* case and other cases on this point, but none of them hold that "background" evidence such as here involved is admissible.

showing that petitioners were protecting themselves and their members against attacks being made on them by GHA, and that the purpose of all of the acts of the petitioners was to preserve, protect and defend petitioners and their codes and rules, relating to, and adopted in the interest of the profession, the public and their own members. This proof, vital though it was to the establishment of the defense, and in direct refutation of the charge of purpose in the indictment, and despite the decision of this Court in the *Chicago Board of Trade* case, was rejected by the court as irrelevant and immaterial. This on the theory that if GHA was injured as a result of the acts of the petitioners, then the intent and purpose behind the acts was immaterial, despite the charge of purpose in the indictment. The crippling effect of such ruling is at once apparent. It practically foreclosed the defense of petitioners. The court ruled and charged, over petitioners' objections, in full accord with the theory of the Government, as detailed above, and such rulings were assigned as error.

Petitioners, being corporations, could be criminally liable on a charge of conspiracy only through imputation to the corporation of the wrongful acts of agents. All of the agents of petitioner corporations, who were in any way involved in the controversy, were found "not guilty." The indictment did refer to "others unknown" but that is immaterial, since the record contains no evidence sufficient to support any conviction purporting to come from or relating to any "unknown" person. Such evidence as there was, was confined to the individual defendants indicted and acquitted.[13] The question here is not one of incon-

[13] In this respect this case differs from *United States* v. *General Motors Corporation*, 121 F. 2d 376, 411.

sistency between verdicts [14] but of an utter failure of proof to support the verdict against petitioners.[15]

After verdict, petitioner moved the court to disregard all the evidence pertaining to the acts and doings of the individual defendants found "not guilty" and to enter judgment for petitioners notwithstanding the verdict. This upon the ground, among others, that, since the evidence related, as original evidence, to the acts of the individual defendants, and since all of this evidence was received on the theory that such individual defendants were co-conspirators, the acquittal of the individual defendants necessarily destroyed the co-conspirator basis. Therefore, as the individual defendants were acquitted, no criminal act, intent, or element remains from which guilt could be imputed to petitioners.

The situation is analogous to that of two conspirators, where one is acquitted,[16] and to cases arising under the rule of respondent superior, where the agent or servant doing the act, is acquitted.[17] Under such circumstances, evidence relating to the acquitted party cannot remain to build up a case against the party held. In these respects the law is clear and there is no conflict.

Moreover, much of the evidence relating to the acts and doings of the individual defendants was highly prejudicial in its nature, and the petitioners contended that the very presence of such evidence in the record, in view of the ultimate acquittal of the individual defendants, inevitably and unavoidably tainted the verdict against petitioners, and thus prevented them from having a

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[14] We have here no multiple counts, as were controlling in *Dunn* v. *United States*, 284 U. S. 390, but a single count, wholly depending for its substance on the guilt of the individual defendants, found "not guilty."

[15] See supporting brief, pp. 40-43 *infra*.

[16] See supporting brief, pp. 41, 42 *infra*.

[17] See supporting brief, pp. 41, 42 *infra*.

separate and unbiased consideration of the case against them, and denied them a fair trial.[18]

But whether the so-called co-conspirator testimony or the respondeat superior rule is considered or not, petitioners assert that there has been a complete failure of proof to establish the charge. This is so because the charge and the acts involved are outside the purview of the Sherman Act. Moreover, petitioners, if doctors be tradesmen, are entitled under the circumstances of this case to the protection of the Clayton and Norris-LaGuardia Acts. The second opinion of the Court of Appeals concedes that petitioners would be within the Clayton and Norris-LaGuardia Acts if those Acts cover "tradesmen" such as doctors, but construes those Acts to cover only laborers who work for wages. Furthermore, GHA was engaged in illegal activities and was violating Federal statutes, and restraints against such illegal activities, even if established, are not and cannot be restraints forbidden and punishable under the Sherman Act. Since physicians have the right to form associations, to establish standards of professional conduct and to effect agreements for self discipline and control, the discussions by petitioners' members pro and con at meetings do not support the charge of conspiracy here involved against petitioners. Otherwise, no society could ever meet without, *ipso facto*, conspiring. The official actions of DMS or AMA were within their lawful powers and related to matters properly within the interest of their organizations, and do not support the charge against them. The hospitals were individual corporations bound only by the action of their proper officials, and with a right to omit or exclude from the medical staffs of such hospitals, doctors whose qualifications, abilities or ethics were in dispute. The exercise of such

[18] See supporting brief, pp. 43, 44 *infra*.

right by the hospitals against GHA doctors, even if through persuasion by others, is insufficient to support the charge that the hospitals were "conspiring with petitioners." Moreover the Court of Appeals held that the defendants had the right of legitimate persuasion and reasoned argument, and no act shown in the record went beyond that. Indeed, when compared with analogous actions by labor, trade, and other associations in support of what they may have believed to have been for the best interest of such organizations, the acts charged or proven to petitioners are innocuous in the extreme.

There is not a scintilla of evidence tending to show that the market was affected either by fixing prices or suppressing competition to the extent that prices were substantially affected, to the injury of the public. No such proof was attempted because no such charge appears in the indictment.[19]

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[19] The charging part of the indictment alleged petitioners conspired for the purpose of restraining trade in the District of Columbia as follows (R. 14, 15):

(1) for the purpose of restraining Group Health Association, Inc., in its business of arranging for the provision of medical care and hospitalization to its members and their dependents on a risk sharing prepayment basis;

(2) for the purpose of restraining the members of Group Health Association, Inc., in obtaining, by cooperative efforts, adequate medical care for themselves and their dependents from doctors engaged in group medical practice on a risk sharing prepayment basis;

(3) for the purpose of restraining the doctors serving on the medical staff of said Group Health Association, Inc., in the pursuit of their callings;

(4) for the purpose of restraining doctors (not on the medical staff of Group Health Association, Inc.) practicing in the District of Columbia, including the doctors so practicing who are made defendants herein, in the pursuit of their callings;

(5) for the purpose of restraining the Washington hospitals in the business of operating such hospitals.

The results accomplished by the alleged conspiracy are stated in the indictment, as follows (R. 20):

"The • • • conspiracy • • • has, as intended by defendants, prevented doctors from becoming or remaining members of the medical staff of Group Health Association, Inc., and has prevented

Other serious errors were committed in the reception of evidence, such as that contained in and attached to the minutes of DMS, the hearsay evidence pertaining to the hospitals and other hearsay evidence, in the rejection of petitioners' written and oral offers of proof, in refusing instructions requested by petitioners, and in the charge of the court to the jury. These errors are identified in the supporting brief.

JURISDICTION.

The jurisdiction of this Court is invoked under Sec. 240 of the Judicial Code as amended by the Act of February 13, 1925 (43 Stat. 938), 28 U. S. C. 347.

QUESTIONS PRESENTED [20]

1. Whether the practice of medicine and the rendering of medical services as described in the indictment are "trade" under Section 3 of the Sherman Act.

2. Whether the indictment charged or the evidence proved "restraints of trade" under Sec. 3 of the Sherman Act.

3. Whether a dispute concerning terms and conditions of employment under the Clayton and Norris-LaGuardia Acts was involved, and, if so, whether petitioners were interested therein, and therefore immune from prosecution under the Sherman Act.

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other doctors from consulting with the doctors on the medical staff of Group Health Association, Inc., and has prevented doctors on the medical staff of Group Health Association, Inc., from treating and operating on their patients in any of the hospitals in or near the District of Columbia."

As there is no charge, there could be no proof that the market was affected either by fixing prices or suppressing competition to the extent that prices of any commodity or service were substantially affected, to the injury of the public, as required by the *Apex* case.

[20] The errors to be urged are in the supporting brief, pp. 28, 29, *infra*.

4. Whether (a) GHA was a corporation engaged in the corporate practice of medicine contrary to law; and (b) engaged in an insurance operation contrary to law, and if so (c) whether those facts were a complete defense as a matter of law or were relevant to any issue in the case and admissible in evidence for the consideration of the jury.

5(a). Whether, considering all the evidence in the record, petitioners' motions to direct a verdict or for judgment notwithstanding the verdict or for a new trial should have been granted.

5(b). As the jury by its verdict found all of the individual defendants not guilty and found two corporations guilty, whether the evidence pertaining to the acts and doings of the individual defendants found not guilty should have been disregarded, and petitioners' motion for judgment notwithstanding the verdict, or motion for a new trial should have been granted.

6. Whether petitioners' motion in arrest of judgment should have been granted.

7. Whether petitioners' motion at the beginning of the trial to expunge specified portions of the indictment because they contained prejudicial matter and improper argument should have been granted, and whether petitioners' objection at the conclusion of the trial to sending the indictment with the jury in its deliberations for the foregoing reasons should have been sustained.

8. Whether it was error to receive in evidence against both petitioners (a) occurrences involving AMA only, antedating the alleged conspiracy and outside of the District of Columbia, as "background"; (b) statements contained in and letters and documents attached to the Minutes of DMS and of the Executive Committee and other committees of DMS; (c) hearsay and otherwise incompetent evidence per-

taining to the Washington hospitals; (d) hearsay evidence in general.

9. Whether it was error to refuse evidence offered by petitioners tending to show that petitioners did not have a purpose or intent to restrain trade, but on the contrary, their purpose or intent was to advance the interests of their members, and to enforce their admittedly valid rules and regulations and principles of medical ethics; and that the restraints, if any, were indirect and reasonable.

10. Whether the court erred in refusing instructions requested by petitioners and in charging the jury.

REASONS FOR GRANTING THE WRIT.

Nearly all of the reasons usually advanced for the allowance of a writ of certiorari are present in this case.[21] The Court of Appeals has not given proper effect to applicable decisions of this Court; has decided questions of general importance, and questions of substance relating to the construction or application of the Constitution and statutes of the United States, which have not been but should be settled by this Court; has decided important questions of Federal

[21] The United States previously petitioned this Court for certiorari (No. 377, October Term, 1939) to remove this case from the Court of Appeals for a decision here on the action of the District Court in sustaining a demurrer to the indictment, for the reasons that the questions involved are "so important" that they should be decided by this Court, and that the "questions of substance relating to the construction and application of" the Sherman Act "have not been, but should be, settled by this Court," and irrespective of how the Court of Appeals decided the questions involved "in view of the nature of the issues, it is probable that this Court would then see fit to grant * * * certiorari."

After the Court of Appeals reversed the action of the District Court sustaining the demurrer, these petitioners petitioned this Court for certiorari (No. 959, October Term, 1939) and the United States in its brief in opposition agreed that the question of the application of the Sherman Act to the charge is "a novel one of importance sufficient for this Court to settle" but contended that certiorari should be denied because the decision was "interlocutory" and "not final".

law which have not, but should be, settled by this Court; has decided Federal questions in a way in conflict with applicable decisions of this Court and has decided important questions of general law in conflict with decisions of this Court, of other Circuit Courts of Appeal and of the majority of the highest courts of the states.

1. The Court of Appeals did not give proper effect to applicable decisions of this Court when it held that the practice of medicine and the rendering of medical services described in the indictment were "trade" within the meaning of the Sherman Act. *Atlantic Cleaners & Dyers* v. *United States*, 286 U. S. 427, 436, held that the liberal arts and the learned professions were not in "trade" within the meaning of Section 3 of the Sherman Act. *Federal Club* v. *National League*, 259 U. S. 200, 209, held that baseball, and by way of example, the practice of law, is not "trade" under the Sherman Act. Other decisions of this Court have held that the learned professions are not "trade."[22] *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 493 (footnote 15), held that no activity could be "trade" within the meaning of the Sherman Act unless it was commercial. The *Apex* case pointed out the legislative history of the Sherman Act and decided that the Act did not cover all activities held to be trade at common law but only those that were "commercial."[23] In this respect the *Apex* case followed the reasoning of the aforesaid previous decisions of this Court.

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[22] *Dandridge* v. *Washington's Executors* (1829), 27 U. S. 369, 377.
May v. *Sloan* (1879), 101 U. S. 231, 237.
Graves v. *Minnesota* (1926), 272 U. S. 425, 429.
Federal Trade Commission v. *Raladam Co.* (1931), 283 U. S. 643, 653.
Semler v. *Dental Examiners* (1935), 294 U. S. 608, 610-612.
Decisions to the same effect in Federal Courts of Appeal and state courts appear in the supporting brief, p. 30, *infra*.

[23] The court below says the practice of medicine was recognized by the English cases as constituting trade (R. 1886). Those cases do not hold the practice of medicine to be trade, and that specific issue was not raised or decided in those cases. The English cases dealt with the validity of ancillary covenants incident to the sales of professional practices. While

2. The Court of Appeals did not give proper effect to applicable decisions of this Court when it held that if a conspiracy was shown, the purpose of which was to injure GHA, it was sufficient to sustain the conviction. The *Apex* case held that the Sherman Act did not take over the entire doctrine of restraint of trade at common law but only took over and included restraint which had been exercised or used in such a way as to affect the market, either by fixing prices or suppressing competition to the extent that prices were substantially affected, to the injury of the public. The indictment was drawn before the decision in the *Apex* case and the charge did not even purport to meet the requirements of the *Apex* case and there was not a scintilla of evidence offered or received pertaining to market prices.

The decision of the Court of Appeals also conflicts with decisions of other Circuit Courts of Appeal,[24] and decides questions of substance relating to the construction and application of the Commerce Clause of the Constitution of the United States and of the Sherman Act.

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a few of those cases, in determining the validity of covenants not to practice medicine in a given locality or during a given time, apply the rule announced in "restraint of trade" cases, "restraint of trade" was not the basis for decision and the overwhelming majority of those cases are based upon principles of public policy, the law of contracts or local statutes and do not even mention "restraint of trade." The *Apex* case considered the English cases and concluded that only "commercial" activities are within the meaning of the word "trade" as used in the Sherman Act.

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[24] *United States* v. *Gold*, 115 F. 2d 236-238; *Gundersheimer's Inc.* v. *Baker, etc., I. Union*, 73 App. D. C. 352, 353, 119 F. 2d 205, 206; *International Ladies' G. W. Union* v. *Donnelly G. Co.*, 119 F. 2d 892-898; *International Ass'n, etc.* v. *Pauly Jail Building Co.*, 118 F. 2d 615, 621; *United States* v. *Local 807 of I. Brotherhood, etc.*, 118 F. 2d 684, 686, 688, 689, affirmed March 2, 1942, — U. S. —, and in the affirmance opinion, footnote 1 shows that the United States abandoned the convictions obtained in the District Court under the Sherman Act and did not seek a review of the decision of the Court of Appeals setting aside the convictions because that court construed the *Apex* case to hold that the evidence must show price fixing or that the acts of the accused had in fact affected prices.

3. The Court of Appeals did not give proper effect to applicable decisions of this Court when it held that the Clayton and Norris-LaGuardia Acts cover only disputes between wage earners or laborers on the one hand and aggregated capital on the other, and when it held "that some phases of labor disputes may come under the condemnation of the Sherman Act, if, for example, they involve a combination or conspiracy which has as its purpose restraint upon competition." Such holdings conflict with *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U. S. 552, 559, 560; *United States* v. *Hutcheson*, 312 U. S. 219; and *Drivers Union* v. *Lake Valley Co.*, 311 U. S. 91.

The decision of the Court of Appeals also conflicts with another decision of the court below and two decisions in the Eighth Circuit,[25] and decided questions of substance relating to the construction and application of the Clayton and Norris-LaGuardia Acts which have not been, but should be, settled by this Court when it limited the protection of such Acts to laborers and wage earners. The plain language of Section 13 of the Norris-LaGuardia Act protects all persons and associations involved in a dispute over employment who are engaged in the same industry, *trade*, craft or *occupation*.

4. The Court of Appeals has decided questions of general importance and questions of substance relating to the construction and application of the Healing Arts Practice Act and the Health, Accident and Life Insurance Companies' Act of the District of Columbia, which have not been, but should be, settled by this Court, and has decided important questions of general law in conflict with decisions

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[25] *Gundersheimer's, Inc.* v. *Baker, etc. I. Union*, 73 App. D. C. 352, 353, 119 F. 2d 205, 206; *International Ladies G. W. Union* v. *Donnelly G. Co.*, 119 F. 2d 892, 898, and *International Ass'n, etc.* v. *Pauly Jail Bldg. Co.*, 118 F. 2d 615, 620.

of the majority of the highest courts of the states [26] when it held that a corporation formed under the Act for the incorporation of charitable, educational and religious associations, such as GHA, could lawfully establish and maintain a medical clinic, including doctors' offices, and employ therein full-time doctors on monthly salaries to render medical services to its members in return for dues paid by them. The Court of Appeals decided questions of substance relating to the construction and application of the Sherman Act when it held that even if GHA was violating Federal statutes and operating illegally, those facts were immaterial, not a defense and could not be shown in evidence nor argued to the jury.

5. The Court of Appeals did not give proper effect to applicable decisions of this Court when it held that the trial court did not err in overruling petitioners' motions to direct a verdict and in overruling petitioners' several motions after verdict. The *Apex* and *Hutcheson* cases were decided after the first opinion of the Court of Appeals, and when it appeared at the time of trial that, considering the law as laid down by those cases, the indictment did not charge an offense, petitioners' motion in arrest of judgment should have been granted. The proof, of course, went to the indictment as drawn, hence petitioners' motions to direct a verdict and to enter judgment notwithstanding the verdict should have been granted.

The Court of Appeals did not give proper effect to applicable decisions of this Court, decided important questions of general law in conflict with decisions of this Court, of other Circuit Courts of Appeal and of the majority of the highest courts of the states, when it held that the trial court did not err in overruling petitioners' motion for judgment notwithstanding the verdict. The situation presented by

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[26] See supporting brief, pp. 36-40, *infra*.

the verdict finding all of the individual defendants "not guilty" made applicable that long line of cases which, without dispute, hold that when a servant is discharged the master cannot be convicted if the conviction must rest on the activities of the servant,[27] and those cases which hold that if all co-conspirators except one are found "not guilty" there can be no conviction of a remaining co-conspirator,[28] and other cases which hold that corporations cannot be guilty of crimes or misdemeanors except through the action of individual agents or servants.[29] This is because the evidence against the agent or co-conspirator found "not guilty" must be disregarded and eliminated.[30]

After disregarding the evidence pertaining to the activities of the individual defendants found "not guilty", if it be thought that there was still evidence in the record to support the verdict, nevertheless it was clear that, with the great mass of evidence in the record pertaining to the activities of the individual defendants found "not guilty", petitioners did not have an adequate separate consideration of their defense,[31] and the petitioners' motion for a new trial should have been granted.

6. The Court of Appeals decided important questions of general law in conflict with other Circuit Courts of Appeal when it held that the trial court was correct in refusing the motion of petitioners at the beginning of the trial to expunge specified portions of the indictment and

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[27] See supporting brief, pp. 41, 42, *infra*.

[28] See supporting brief, p. 41 *infra*.

[29] See supporting brief, p. 42 *infra*.

[30] The cases of *United States* v. *Austin-Bagley Corp.*, 31 F. 2d 229, 233, and *United States* v. *General Motors Corporation*, 121 F. 2d 376, 411, when carefully analyzed, are not to the contrary.

[31] *United States* v. *Standard Oil Co.*, 23 F. Supp. 937, 938, 939, which seems to have approval on this point in *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 243; *Wilson* v. *United States*, 109 F. 2d 895, 896, and *Collenger* v. *United States*, 50 F. 2d 345, 350.

to exclude evidence pertaining thereto, because it contained prejudicial matter, argument and passionate appeals to the jury (R. 30, 33, 87), and in overruling the objection of the petitioners at the conclusion of the charge to the jury to sending the indictment with the jury for the same reasons (R. 1513). *Johnson* v. *United States*, 59 F. 2d 42, 44; *Beck* v. *United States*, 33 F. 2d 107, 110.

7. The Court of Appeals did not give proper effect to the applicable decisions of this Court and decided important questions of general law in conflict with other Circuit Courts of Appeal when it approved the action of the trial court in receiving in evidence so-called "background" evidence of occurrences, events and correspondence all over the United States on dates long antedating the beginning of alleged conspiracy and in refusing the motion of petitioners at the close of all the evidence to strike such evidence and in receiving in evidence so-called "hospital" evidence when there was no prima facie showing that the hospitals were co-conspirators, and in refusing the motion of the petitioners at the close of all the evidence to strike such "hospital" evidence. The decision as to the "background" evidence is in conflict with *American Banana Co.* v. *United Fruit Co.*, 213 U. S. 347, 357; *Wilson* v. *United States*, 109 F. 2d 895, 896, and *Eastern States Petroleum Co.* v. *Asiatic P. Corp.*, 103 F. 2d 315, 319, and as to the hearsay hospital evidence is in conflict with *Tri-State Broadcasting Co.* v. *Federal C. Commission*, 68 App. D. C. 292, 294, 295; 96 F. 2d 564-567; *Stager* v. *United States*, 233 F. 510, 513, and *Pope* v. *United States*, 289 F. 312, 315.

8. If the so-called "background evidence" was admissible against petitioners on the theory that it tended to show intent and purpose, then the Court of Appeals did not give proper effect to the applicable decisions of this

Court when it held the evidence offered by petitioners, tending to show that GHA was violating Federal statutes and otherwise operating illegally and improperly, was not admissible as tending to show that the intent and purpose of petitioners was not to restrain GHA but to uphold their established standards of professional conduct for their members and their agreements for self-discipline and control.[32] *Chicago Board of Trade* v. *United States*, 246 U. S. 231, 238. The proffered evidence was not a reason or excuse for what was done but was evidence tending to show intent and purpose. If any of the proffered proof formed a link in the evidence on any issue in the case, its refusal is a sufficient basis for the allowance of certiorari. *McCandless* v. *United States*, 298 U. S. 342, 346.

9. The Court of Appeals did not give proper effect to the applicable decisions of this Court and decided important questions of general law in conflict with other Circuit Courts of Appeal and decided questions of substance relating to the construction and application of the Commerce Clause of the Constitution of the United States, the Sherman Act, the Clayton and Norris-LaGuardia Acts, the Healing Arts Practice Act, and the Health, Accident and Life Insurance Companies' Act of the District of Columbia, when it upheld the action of the District Court in refusing instructions requested by petitioners and in the giving of instructions to the jury.[33]

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[32] The offers of proof appear at R. 910-920, 961, 1011, 1013-1025, 1355, 1356, 1363, 1420, 1429-1435, 1438 and 1440. The ultimate facts which the offers of proof tended to show appear in the supporting brief, pp. 49, 50 *infra*.

[33] *Apex* and *Hutcheson* cases and see supporting brief, pp. 51-54 *infra*.

CONCLUSION.

WHEREFORE, the petitioners pray the granting of writs of certiorari to the United States Court of Appeals for the District of Columbia.

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Attorneys for Petitioners.

July 3, 1942.

IN THE

Supreme Court of the United States

October Term, 1941

No. .....

AMERICAN MEDICAL ASSOCIATION, a Corporation, *Petitioner*,

vs.

UNITED STATES OF AMERICA, *Respondent*.

No. .....

THE MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA, a Corporation, *Petitioner*,

vs.

UNITED STATES OF AMERICA, *Respondent*.

BRIEF IN SUPPORT OF PETITION FOR WRITS OF CERTIORARI.

THE OPINIONS BELOW.

Petitioners' demurrer to the indictment was sustained in *United States* v. *American Medical Association, et al.*, 28 F. Supp. 752. This decision was reversed by the Court of Appeals in its first opinion, *United States* v. *American Medical Association, et al.*, 72 App. D. C. 12, 110 F. 2d

703. The second opinion of the Court of Appeals, filed June 15, 1942, affirming the judgments of conviction against petitioners, is not yet reported and is at R. 1886.

A statement of the case appears in the petition.

SPECIFICATION OF ERRORS TO BE URGED.

The court below erred: (1) In reversing the judgment of the District Court sustaining petitioners' demurrer to the indictment. (2) In holding the indictment charged a conspiracy in violation of Sec. 3 of the Sherman Act. (3) In holding the indictment was not insufficient and not prejudicial. (4) In affirming (on the second appeal) petitioners' convictions. (5) In construing Sec. 3 of the Sherman Act as applying to and forbidding the activities charged in the indictment or proven in the evidence. (6) In construing the Clayton and Norris-LaGuardia Acts as not applying to the activities charged in the indictment or proven in the evidence. (7) In construing the Healing Arts Practice Act and the Insurance Code of the District as permitting GHA, a corporation, to practice medicine without a license, and to engage in an insurance operation, without complying with the Insurance Code. (8) In holding that a restraint on an activity which was violative of Federal statutes and otherwise illegal and criminal is, nevertheless, a violation of the Sherman Act. (9) In affirming the following: (a) the denial of petitioners' motion to strike portions of the indictment and to exclude evidence pertaining thereto; (b) the overruling of petitioners' objections to sending the indictment with the jury; (c) the admission of evidence offered by respondent; (d) denial of petitioners' motion to strike evidence erroneously received; (e) the denial of petitioners' written and oral offers of proof; (f) the denial of petitioners' motions for a directed verdict at the close of

all the evidence; (g) the giving of respondent's instructions to the jury; (h) the refusal of or modification of petitioners' requested instructions; (i) the charge to the jury; (j) the denial of petitioners' motion to set aside the verdict and to enter judgment for the petitioners; (k) the denial of petitioners' motion in arrest of judgment; (l) the denial of petitioners' motion for a new trial; and (m) the entry of judgments on the verdict and the assessment of fines against petitioners.

ARGUMENT.

I.

The practice of medicine and the rendering of medical services[1] are not "commercial" and not "trade" under Section 3 of the Sherman Act.

The decisions below holding that the practice of medicine and the rendering of medical services are trade under the Sherman Act, disregard as "casual" and "not a proper guide" the definition of trade this Court undertook to give in *Atlantic Cleaners & Dyers* v. *United States*, 286 U. S. 427, 436, that the liberal arts and the learned professions were not in "trade" under Section 3 of the Sherman Act. *Federal Club* v. *National League*, 259 U. S. 200, 209, held that personal effort, not related to production, such as base-

[1] The Court of Appeals concedes (R. 1890), that there is authority for the proposition that private hospitals supported by appropriations and charity are not engaged in trade, business or industry, but concludes, without any support in the evidence, that it has no doubt that the hospitals described in the indictment were engaged in trade within the meaning of the Sherman Act, citing *Jordan* v. *Tashiro*, 278 U. S. 123, 127-129. In the *Jordan* case the articles of incorporation provided for "a business corporation with a share capital of $100,000.00" and the issue was decided under the provisions of a treaty which required the broadest interpretation of the word "trade." Such proof as there was in the record in this case tends to show that the Washington hospitals are non-profit institutions for the care of the sick and their funds are used for that purpose (R. 591, 1338).

ball and the practice of law, is not "trade" under the Sherman Act. Other decisions of this Court, of Circuit Courts of Appeal, and of State Courts without dissent, have held that the learned professions and similar occupations are not "trade."[2] *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 493 (footnote 15), considered the legislative history of the Sherman Act, construed the *Atlantic Cleaners & Dyers* case quite differently than the court below, and held that no activity could be "trade" within the meaning of the Act unless it was "commercial." If the professions be "trades," all statutes regulating professional conduct are subject to attack on constitutional grounds. *Semler* v. *Dental Examiners, et al.*, 294 U. S. 608, 610-612, *Graves* v. *Minnesota*, 272 U. S. 425, 429.

II

"Restraint of trade" under Section 3 of the Sherman Act is not established in this case because it is neither alleged nor proven that the claimed restraints affected the market, either by fixing prices or suppressing competition to the extent that prices were substantially affected, to the injury of the public.

The *Apex* case involved an admitted conspiracy on the part of employees and others and their organizations to

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[2] *Dandridge* v. *Washington's Executors*, 27 U. S. 369, 377; *May* v. *Sloan*, 101 U. S. 231, 237; *Graves* v. *Minnesota*, 272 U. S. 425, 429; *Federal Trade Commission* v. *Raladam Co.*, 283 U. S. 643, 653; *Semler* v. *Dental Examiners*, 294 U. S. 608, 612; *Toxaway Hotel Co.* v. *Smathers*, 216 U. S. 439, 449; *In Re United States Hotel Co.*, 134 F. 225, 226, 228; *Jeu Jo Wan* v. *Nagle*, 9 F. 2d 309, 310; *Spence* v. *Johnson*, 142 Ga. 267, 82 S. E. 646; *State* v. *McClelland*, 155 La. 37, 98 S. 748; *Whitcomb* v. *Reid*, 31 Miss. 567, 569; *Polhemus* v. *DeLisle*, 98 N. J. Eq. 256, 130 A. 618; *People* v. *Kelly*, 255 N. Y. 396, 175 N. E. 108; *Metropolitan Opera Co.* v. *Hammerstein*, 147 N. Y. S. 532, 162 App. Div. 691, aff'd. 221 N. Y. 507, 116 N. E. 1061; *Iselin* v. *Flynn*, 154 N. Y. S. 133; *First Nat. Bank* v. *Abilene Hotel Co.*, 46 Tex. Civ. App. 595, 103 S. W. 1120; *Crowder* v. *Graham* (Tex. Civ. App.), 201 S. W. 1053; *Werth* v. *Fire Companies Adj. Bureau*, 160 Va. 845, 171 S. E. 255.

seize and shut down the manufacturing plant of an employer, Apex Hosiery Co., with a sit-down strike, destruction of property, stoppage of manufacturing and of interstate shipments, and force and violence of the most brutal and wanton character, but this Court held (p. 481) "that the effect" of such acts would "bring the acts of respondents by which the restriction was effected within the reach of the commerce power *if Congress had seen fit to exercise it*," and then held that the term "restraint of trade" as used in the Sherman Act meant only such activities which had been exercised or used in such a way as to affect the market, either by fixing prices or suppressing competition to the extent that prices were substantially affected, to the injury of the public. The Court then held that there was no evidence that prices had been affected and hence no violation of the Sherman Act. The Court also held that the Sherman Act did not take over the doctrine of restraint of trade at common law in its entirety but only as aforesaid.[3]

In the case at bar, even if the indictment charged and the evidence showed (which is denied) a restraint that tended to impair or destroy GHA, that would not spell out a violation of the Sherman Act, under the *Apex* case and the *Hutcheson* case.[4]

The decisions below, holding that the indictment and the evidence show a violation of the Sherman Act, also con-

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[3] This Court made its holding on this important point emphatic, when it said (p. 500) contracts, combinations or conspiracies are to be condemned under the Sherman Act "only when their purpose or effect was to raise or fix the market price. It is in this sense that the restraints, actual or intended, prohibited by the Sherman Act are only those which are so substantial as to affect market prices."

[4] The respondent has conceded that such a charge does not make out a case under the Sherman Act. In the *Hutcheson* case, respondent conceded to this Court that the "closing down of a factory" engaged in an interstate business is not enough to show a violation of the Sherman Act, 312 U. S. 222.

flict with several decisions in the Circuit Courts of Appeal which have examined the scope of the *Apex* decision [5] and with two other Federal decisions.[6] Those cases all squarely hold only such restraints are within the act that restrain commercial activities, the effect of which is to affect the market, either by fixing prices or suppressing competition to the extent that prices are substantially affected to the injury of the public. Those elements are neither pleaded nor proved in this record. There was not a scintilla of evidence to that effect.

In the *Apex* case the Court pointed out that the remedy for wrongs existing outside the proper purview of the Sherman Act must be found in other applicable statutes or laws. Such remedies have been sought under varying types of complaints.[7]

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[5] *International Ladies G. W. Union* v. *Donnelly G. Company*, 119 F. 2d 892, 898; *Gundersheimer's Inc.* v. *Baker, etc., I. Union*, 73 App. D. C. 352, 353, 119 F. 2d 205, 206; *United States* v. *Local 807 of I. Brotherhood, etc.*, 118 F. 2d 684-689, affirmed March 2, 1942, — U. S. —; *International Ass'n. etc.* v. *Pauly Jail Bldg. Co.*, 118 F. 2d 615, 621; *United States* v. *Gold*, 115 F. 2d 236-238.

[6] *Konecky* v. *Jewish Press*, 288 F. 179; and *Swartz* v. *Forward Ass'n.* 41 F. Supp. 294.

[7] The prosecution in this case was conceived in the opinion of a judge of a trial court in England, *Pratt* v. *British Medical Association*, 1 K. B. (1919) 244. That opinion arose out of an action in tort for damages on the theory that defendants maliciously conspired to injure plaintiff doctors. Actual malice and social persecution were involved. The judgment for plaintiffs was not appealed. Three years later the Appellate Division of the Kings Bench in the case of *Ware and DeFreville* v. *Motor Trade Association*, 3 K. B. (1921) 40, severally criticized the Pratt opinion, stating it was "quite impossible to harmonize" it with other decisions. Our American courts without dissent have held in private actions, both legal and equitable, based upon alleged torts asserted to have been committed in the enforcement of rules and regulations of medical societies and hospitals, that such cases do not present a basis for relief. *Bryant* v. *District of Columbia Dental Society*, 26 App. D. C. 461; *Newton* v. *Board of Commissioners*, 86 Colo. 446, 282 P. 1068; *Olander* v. *Johnson*, 258 Ill. App. 89; *Irwin* v. *Lorio*, 169 La. 1090, 126 S. 669; *McDonald* v. *Massachusetts General Hospital*, 120 Mass. 432; *Weyrens* v. *Scotts Bluff County Medical Society*,

III

A dispute concerning terms and conditions of employment under Clayton and Norris-LaGuardia Acts was involved in this case, in which petitioners were interested. The case is therefore not within the Sherman Act.

If petitioners' doctor-members be "tradesmen", the record shows a dispute or controversy concerning terms and conditions of employment in which petitioners were interested.

When a subcommittee of the Executive Committee of DMS and representatives of GHA conferred for the first time (R. 290-309) a controversy arose, the matrix of which was the terms and conditions of employment by GHA of members of DMS to perform GHA's corporate medical work. GHA rejected an offered basis of employment of members of DMS, insisted upon dictating the terms, conditions, and method of payment of compensation and of employing members of DMS, regardless of whether GHA's plans were illegal or in conflict with the constitution and employment rules of DMS. This controversy over terms and conditions of employment continued throughout the indictment period and was involved in all of the activities charged or proven; hence because of the Clayton and Norris-LaGuardia Acts this case is not within the Sherman Act. *United States* v. *Hutcheson*, 312 U. S. 219; *United States* v. *Carrozzo*, 37 Fed. Supp. 191, affirmed 313 U. S. 508; *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U. S. 552; *Drivers Union* v. *Lake Valley Co.*, 311 U. S. 91;[8] and

133 Neb. 814, 277 N. W. 378; *Branagan* v. *Buckman*, 67 Misc. 242, 122 N. Y. S. 610, affirmed 130 N. Y. S. 1106; *Strauss* v. *Marlboro County General Hospital*, 185 S. C. 425, 194 S. E. 65; *Harris* v. *Thomas* (Tex. Civ. App.), 217 S. W. 1068; *Porter* v. *King County Medical Society*, 186 Wash. 410, 58 P. 2d 367.

[8] And compare "labor dispute" immunity conferred by Anti-Racketeering Act as interpreted in *United States* v. *Local 807 of I. Brotherhood, etc.*, decided March 2, 1942, —— U. S. ——.

the plain language of the Clayton and Norris-LaGuardia Acts.

If doctors be in trade, it necessarily follows that Secs. 6 and 20 of the Clayton Act are applicable. Sec. 6 provides that the labor of a human being is not a commodity of commerce. Sec. 20 of the Act covers all employers and employees including corporations and associations and, as expanded by Sec. 13 of the Norris-LaGuardia Act, includes all persons and associations involved in a dispute over terms or conditions of employment who are engaged in the same industry, *trade*, craft or *occupation*, or have direct or indirect interests therein. The Acts cover any third party, even though that party be a corporation not in trade [9] and employers and their associations [10] even if only *indirectly* interested in the controversy. The Clayton and Norris-LaGuardia Acts cannot logically be confined exclusively to the laborer who works for wages.[11]

As GHA's wilful employment of doctor-members of DMS (and AMA) and the terms and conditions of such employment was the matrix of this controversy,[12] it follows that the acts charged or proven to petitioners are not within the Sherman Act. The holding below that petitioners are not within the Clayton and Norris-LaGuardia Acts conflicts with another decision of the court below and two decisions of the Eighth Circuit.[13]

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[9] *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U. S. 552.

[10] *Drivers Union* v. *Lake Valley Co.*, 311 U. S. 91, 93, 94.

[11] The court below held the word "trade" in the Sherman Act is broad enough to include the professions, but holds that the words "industry", "trade", "craft" or "occupation", in the Norris-LaGuardia Act are not broad enough to include them.

[12] *Columbia River Packers Assn.* v. *Hinton*, 315 U. S. 143, 147.

[13] *Gundersheimers, Inc.*, v. *Bakery, etc., I. Union*, 73 App. D. C. 352, 353, 119 F. 2d 205, 206; *International Ladies G. W. Union* v. *Donnelly G. Co.*, 119 F. 2d 892, 898; *International Assn.* v. *Pauly Jail Bldg. Co.*, 118 F. 2d 615, 620. And compare *United States* v. *Local 807 of I. Brotherhood, etc.*, 118 F. 2d 684, 686, 689, affirmed March 2, 1942, —— U. S. ——.

IV

The activities of GHA, charged to have been restrained, were illegal in that GHA was engaged in the corporate practice of medicine and in an insurance operation contrary to law. These facts were a complete defense as a matter of law, or at least admissible in evidence for the consideration of the jury.

On February 24, 1937, three lay persons filed a certificate of incorporation for the purpose of incorporating GHA.[14] Its activities were to be managed and controlled by a board of trustees (R. 1224).[15]

The by-laws provided for the employing and hiring of "corporation doctors" as GHA planned to render medical services to members and their dependents (R. 1232, 1341-1343, 1245-1247, 1249, 1251-1255). The evidence showed without conflict or dispute that GHA employed full-time doctors by the month, who were not permitted to have private practice (R. 293), to work in its clinic and render medical services to its members, who paid monthly dues therefor to GHA. The statement of the Court of Appeals that GHA's salaried, employee, full-time doctors were independent contractors or were called when needed has no support in the evidence.

While the Court of Appeals placed much reliance on the theory that GHA was not practicing medicine because it was a non-profit corporation, we insist that that is beside the point. (On the first appeal the Government

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[14] Under the District of Columbia Code (1940) Title 29, Secs. 29-601 to 29-606 for the incorporation of charitable, educational and religious associations.

[15] At no time during the indictment period did the by-laws require that any trustee be a doctor, and during that time no doctor was a member of the board of trustees.

argued that GHA was a profit-making corporation. Brief pp. 26, 46). If a corporation is rendering medical services and illegally practicing medicine, it is wholly immaterial whether it was organized for profit or not for profit. Corporations not for profit can no more obtain a license to practice medicine than a corporation for profit. Congress made no distinction between the types of corporations involved and under the Healing Arts Practice Act confined the practice of medicine to licensed qualified physicians.[16]

Moreover, membership corporations, like GHA, organized not for profit, illegally practice medicine or law when they employ doctors or lawyers on a salary basis to render medical or legal services to their members.[17]

Nor is it material that the corporation is formed along cooperative or association lines with members or subscribers; and such corporations, when they employ doctors or lawyers on a salary basis to render medical or legal services to their members or subscribers, are illegally engaged in the practice of medicine or law.[18]

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[16] The Healing Arts Practice Act is all-inclusive and comprehends every kind and character of medical treatment. Appendix pp. 59, 60 *infra*.

[17] *Merrick* v. *American Automobile Assn.* (D. C. D. C.), 31 F. Supp. 876; *People* v. *Association of Real Estate Tax Payers of Illinois*, 354 Ill. 102, 187 N. E. 823; *People* v. *Motorists Assn. of Illinois*, 354 Ill. 595, 188 N. E. 827; *People* v. *Chicago Motor Club*, 362 Ill. 50, 199 N. E. 1; *Seawell* v. *Caroline Motor Club and American Automobile Assn.*, 209 N. C. 624, 184 S. E. 540; *Richmond Assn. of Credit Men* v. *Bar Assn.*, 167 Va. 327, 189 S. E. 153.

[18] *People* v. *Pacific Health Corp.*, 12 Cal. 2d 156, 82 P. 2d 429, cert. den. 306 U. S. 633; *People* v. *Merchants Protective Corp.*, 189 Cal. 531, 209 P. 363; *Masters* v. *Board of Dental Examiners*, 15 Cal. App. 2d 506, 59 P. 2d 827; *People* v. *Cal. Protective Corp.*, 76 Cal. App. 354, 244 P. 1089; *Depew* v. *Wichita Assn. of Credit Men*, 142 Kans. 403, 49 P. 2d 1041, cert. den. 297 U. S. 710; In re *Maclub of America*, 295 Mass. 45, 3 N. E. 2d 272; *In re Co-operative Law Co.*, 198 N. Y. 479, 92 N. E. 15; *Rhode Island Bar Assn.* v. *Automobile Service Assn.*, 55 R. I. 122, 179 A. 139; *State* v. *Credit Men's Assn.*, 163 Tenn. 450, 43 S. W. 2d 918; *State* v. *Merchants Protective Corp.*, 105 Wash. 12, 177 P. 694.

The decision of the Court of Appeals conflicts with every respectable authority in this country, as the fundamental test seems to be that if a corporation hires or employs a doctor or a lawyer to render medical or legal services to members, customers, or to any person or party other than the corporate entity itself, it is illegally practicing medicine or law.[19]

As it was conceded that GHA had a profit object and there was evidence showing that the ordinary relationship between physician and patient was lost as GHA was prac-

[19] *Parker* v. *Board of Dental Examiners*, 216 Cal. 285, 14 P. 2d 67; *Pacific Employers Insurance Co.* v. *Carpenter*, 10 Cal. App. 2d 592, 52 P. 2d 992; *Benjamin Franklin Life Assurance Co.* v. *Mitchell*, 14 Cal. App. 2d 654, 58 P. 2d 984; *People* v. *Painless Parker Dentist*, 85 Col. 304, 275 P. 928, cert. den. 280 U. S. 566; *State Board of Dental Examiners* v. *Savelle*, 90 Col. 177, 8 P. 2d 693; *People* v. *Denver Clearing House Banks*, 99 Col. 50, 59 P. 2d 468; *Boykin* v. *Hopkins*, 174 Ga. 511, 162 S. E. 796; *People* v. *Peoples Stockyard State Bank*, 344 Ill. 462, 176 N. E. 901; *Allison* v. *Allison*, 360 Ill. 638, 196 N. E. 799; *People* v. *United Medical Service*, 362 Ill. 442, 200 N. E. 157; *State* v. *Boston System Dentist*, (Ind.) 19 N. E. 2d 949; *State* v. *Bailey Dental Co.*, 211 Iowa 781, 234 N. W. 260; *State* v. *Kindly Optical Co.*, 216 Iowa 1157, 248 N. W. 332, *Winslow* v. *State Board*, 115 Kans. 450, 223 P. 308; *Johnston* v. *Stumbo*, 277 Ky. 301, 126 S. W. 2d, 165; *In re Opinion of the Justices*, 289 Mass. 607, 194 N. E. 313; *In re Shoe Mfrs. Protective Assn.*, 295 Mass. 369, 3 N. E. 2d 746; *McMurdo* v. *Getter*, 298 Mass. 200, 10 N. E. 2d 139; *Detroit Bar Assn.* v. *Union Guardian Co.*, 282 Mich. 216, 276 N. W. 365; *In re Otterness*, 181 Minn. 254, 323 N. W. 318; *State* v. *St. Louis Union Trust Co.*, 335 Mo. 845; 74 S. W. 2d 348; *State* v. *C. S. Dudley and Co.*, 340 Mo. 852; 102 S. W. 2d 895; *State* v. *Merchants Credit Service*, 104 Mont. 76, 66 P. 2d 337; *Unger* v. *Landlord's Management Corp.*, 144 N. J. Eq. 68, 168 A. 229; *People* v. *Warden*, 152 N. Y. Supp. 977, 168 App. Div. 240; *Stern* v. *Flynn*, 278 N. Y. Supp. 598; *In re Tuthill*, 10 N. Y. Supp. 2d 643; *U. S. Title Guaranty Co.* v. *Brown*, 217 N. Y. 628, 111 N. E. 828; *Land Title and Abstract Co.* v. *Dworken*, 129 Oh. St. 23, 193 N. E. 650; *Rowe* v. *Standard Drug Co.*, 132 Oh. St. 629, 9 N. E. 2d 609; *Judd* v. *City Trust & Savings Bank*, 133 Oh. St. 81, 12 N. E. 2d 288; *Public Service Traffic Bureau, Inc.* v. *Haworth Marble Co.*, 40 Oh. App. 255, 178 N. E. 703; *Neill* v. *Gimbel Bros.*, 330 Pa. 213, 199 A. 178; *Ezell* v. *Ritholz*, 188 S. C. 39, 198 S. E. 419, *State* v. *James Sanford Agency*, 167 Tenn. 339, 69 S. W. 2d 895; *State* v. *Clinic*, 186 Wash. 384, 58 P. 2d 812; *Eisensmith* v. *Buhl Optical Co.*, 115 W. Va. 776, 178 S. E. 695.

ticing medicine wholesale (R. 950, 951), the decision below is unsound and conflicts with earlier decisions of that court.[20] As the restraints charged primarily concerned the activities of GHA in the practice of medicine and the rendering of medical services, the illegality of GHA's practice should be a complete defense. In *Citizens' Who. Gro. Co.* v. *Snyder*, 201 F. 907, it was held that a restraint under an ordinance believed to be valid, but subsequently held invalid, would not support a suit under the Sherman Act.

The Court of Appeals held that GHA could lawfully maintain a medical clinic and render medical services through employed, full-time, salaried doctors without violating Federal statutes or illegally practicing medicine, and also held that even if GHA was illegally practicing medicine, that fact was immaterial, not admissible in evidence and not arguable to the jury. This on the theory that a restraint on an illegal activity violates the Sherman Act. The Court of Appeals cites as an example that it is a crime to conspire to dynamite a house of ill repute, but we submit that does not amount to saying that it would be restraint of the trade of a house of ill repute if a medical association expelled its members who frequented such a place or accepted employment from it for the purpose of furthering its illegal activities. Moral turpitude and criminal activities have always been grounds for expulsion from medical and legal societies.

The opinion is not sound when it holds that the illegality of GHA is immaterial and inadmissible and hence a medical association restrains trade when it expels a member

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[20] *Merrick* v. *American Security & Trust Co.*, 71 App. D. C. 72, 107 F. 2d 271, 276; *Silver* v. *Lansburgh Bro.*, 72 App. D. C. 77, 111 F. (2d) 518.

for accepting employment from an activity in which both the member and his employer violate Federal statutes.[21]

GHA was engaged also in an insurance operation contrary to law. It was incorporated to furnish and pay for medical services and hospitalization (R. 1241-1244). Upon the happening of a contingency, in exchange for dues, GHA paid for (or furnished) medical services and hospitalization (R. 298, 305).[22]

Thus GHA made contracts with its members (R. 298, 305) for the payment of an indemnity on account of sickness or accident, on the happening of certain contingencies, in exchange for dues. That was engaging illegally in an insurance operation.[23]

[21] *Fashion Guild* v. *Trade Commission*, 312 U. S. 457, is not an authority to the contrary. The remark of the court as to torts was obiter, as no tort existed. The persons restrained were engaged in lawful business, and the claimed evil was only one element therein. Morover, a tort, under state law, is not the same as violations of Federal statutes. Here all parties are under Federal statutes, and the complete activity of GHA was inherently illegal. The Sherman Law should not be construed to protect, against restraints, activities that are in violation of Federal statutes. See Sec. 8 of the Norris-LaGuardia Act, Appendix p. 58 *infra*, to the effect that injunctive relief cannot be granted to any complainant who has failed to comply with any obligation imposed by law if complainant is involved in a dispute within that Act.

[22] Insurance operations in the District are defined by the Act of March 3, 1901, as amended (D. C. Code 1940, Title 35, Sec. 35-202) which provides:

"Every corporation . . . transacting business in the District of Columbia, which collects premiums, dues, or assessments from its members, or from holders of its certificates or policies, and which provides for the payment of indemnity on account of sickness or accident, or a benefit in case of death, shall be known as 'health, accident, and life insurance companies or associations'."

Concededly GHA had *not* qualified under this Act.

[23] *Physicians' Defense Co.* v. *Cooper*, 199 F. 576; *Allin* v. *Motorists' Alliance*, 234 Ky. 714, 29 S. W. 2d 19; *State* v. *Bean*, 193 Minn. 113, 258 N. W. 18; *Physicians' Defense Co.* v. *O'Brien*, 100 Minn. 490, 111 N. W. 396; *People* v. *Standard Plate Glass Co.*, 153 N. Y. S. 1012; *Renschler* v. *State*, 90 Oh. St., 363, 107 N. E. 758; *State* v. *Mutual Mortuary Assn.*, 166 Tenn. 266, 61 S. W. 2d 664; *National Auto Service Corp.* v. *State* (Tex. Civ. App.), 55 S. W. 2d 209; *State* v. *Globe Casket & Undertaking Co.*, 82 Wash. 124, 143 P. 878.

GHA, on the present record, cannot be within any of the exemptions provided for by law as it is not a relief association, and its membership included employees in more than forty different agencies and bureaus.[24]

V

The motion of the petitioners for judgment notwithstanding the verdict, or in the alternative for a new trial, should have been granted.

The jury brought in an anomalous verdict, acquitting all twenty-one individual defendants and convicting AMA and DMS despite the fact that all acts done, which had any tendency to support the indictment, were committed by the individual defendants. Any responsibility so far as AMA and DMS are concerned must rest upon the doctrine of imputation. There is therefore no evidence to support the verdict.

After verdict petitioners filed suitable motions which presented the following propositions.

1. In determining whether there is competent evidence in the record sufficient to sustain the conviction of petitioners, all testimony relating to the acquitted individual defendants must be disregarded. All of the testimony as to the individual defendants was received in evidence under the co-conspirator rule and was not otherwise admissible. Obviously, the verdict of not guilty was a definite finding that such individual defendants were not co-conspirators, and, therefore, there was no basis left upon which the evidence submitted was competent. If a new trial were had, none of the evidence as to the acts of the individual defend-

[24] To be exempt from the Insurance Code, GHA would have to be a relief association composed solely of employees of a single branch of the United States Government service or solely of employees of any individual, company, firm, or corporation (D. C. Code 1940, Title 35, Section 35-202).

ants would be admissible, and AMA and DMS would have to answer only for their own acts. Under such circumstances the testimony of acquitted defendants should not be available in support of the conviction of the AMA and DMS, and the decisions so hold.[25] By analogy, where two persons are charged with conspiracy and one is acquitted, the evidence against such acquitted defendant is no longer available to convict the remaining defendant, and hence the other defendant must be released.[26]

Likewise in *respondeat superior* cases where the agent or servant who performed the act has been released, evidence pertaining to his acts and doings cannot be used to establish a liability against the master, and the case against the master must be dismissed.[27] The point is that the verdict of the jury has destroyed the basis under which the testimony was admissible; therefore it must be ignored in passing on the guilt or innocence of another defendant.

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[25] *Clark* v. *United States*, 61 F. (2d) 409, 410; *Hohenadel Brewing Co.* v. *United States*, 295 F. 489, 490; *Pope* v. *United States*, 289 F. 312, 315; *Stager* v. *United States*, 233 F. 510, 513.

[26] *Worthington* v. *United States*, 64 F. 2d 936, 939; *Didenli* v. *United States*, 44 F. 2d 537, 538; *Grove* v. *United States*, 3 F. 2d 965, 967; *Williams* v. *United States*, 282 F. 480, 484; *Miller* v. *United States*, 277 F. 721, 726; *Feder* v. *United States*, 257 F. 694, 696.

[27] *Buckeye Powder Co.* v. *Dupont de Nemours Powder Co.*, 248 U. S. 55, 62; *Bigelow* v. *Old Dominion Copper Mining & Smelting Co.*, 225 U. S. 111, 133; *Union Trust Co.* v. *Woodrow Mfg. Co.*, 63 F. 2d 602, 605, 606; *Rosenzweig & Sons* v. *Jones*, 50 Ariz. 303, 72 P. 2d 417; *Stanton* v. *Arkansas Democrat Co.*, 194 Ark. 135, 106 S. W. 2d 584; *Jentick* v. *Pacific Gas & Elec. Co.*, (Cal.) 114 P. 2d 343; *Johnson* v. *The City of San Fernando*, 35 Cal. App. 2d 244, 95 P. 2d 147; *People* v. *Angelopoulos*, 30 Cal. App. 2d 538, 86 P. 2d 873, 878; *Williams* v. *Hines*, 80 Fla. 690, 86 S. 695; *Roadway Express* v. *McBroom*, 61 Ga. App. 505, 6 S. E. 2d 460; *Territory* v. *Thompson*, 26 Hawaii 181; *J. F. Martin Cartage Co.* v. *Dempsier Bros.*, 311 Ill. App. 70, 35 N. E. 2d 391; *Kelly* v. *Powers*, 303 Ill. App. 198; *Holbrook* v. *Nolan*, 105 Ind. App. 75, 10 N. E. 2d 744; *Hall* v. *Miller*, 212 Ia. 835, 235 N. W. 298; *Lahr* v. *Chicago & N. W. Ry. Co.*, 212 Ia. 544, 234 N. W. 223; *Blue Valley Creamery Co.* v. *Cronimus*, 270 Ky. 496, 110 S. W. 2d 286; *Illinois Central Ry. Co.* v. *Applegate's Admx.*, 268 Ky. 458, 105 S. W. 2d 153;

2. Any corporate liability for crime must rest on the doctrine of imputed guilt. This necessitates a precedent guilt in the individual actor for whose act the corporation is responsible.[28] What was done in this case was done by the individual defendants, and corporate guilt must come through those acts.[29] The acquittal of the individual defendants by the jury is a conclusive finding that the acts done by them were not criminal, and therefore noth-

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Giedrewicz v. *Donovan*, 277 Mass. 563, 569, 179 N. E. 246, 248; *Presley* v. *Central Terminal Co.*, (Mo. App.) 142 S. W. 2d 799; *Beck* v. *Moll*, (Mo. App.) 102 S. W. 2d 671; *Bingham* v. *National Bank of Montana*, 105 Mont. 159, 72 P. 2d 90; *Bohmont* v. *Moore*, 138 Neb. 784, 295 N. W. 419; *Prendergast* v. *Jacobs*, 110 N. J. Law 435, 166 A. 94; *United States* v. *Santa Rita Store Co.*, 16 N. Mex. 3, 113 P. 620; *Good Health Dairy Products* v. *Emery*, 275 N. Y. 14, 9 N. E. 2d 758; *Pangburn* v. *Buick Motor Co.*, 211 N. Y. 228, 105 N. E. 423; *Thibodeau* v. *Gerosa Haulage & Warehouse Corp.*, 252 App. Div. 615, 300 N. Y. S. 686; *People* v. *Safeway Coal Co.*, 242 App. Div. 659, 272 N. Y. S. 658; *Agoado* v. *Cohen, et al.*, 234 App. Div. 37, 254 N. Y. S. 134; *Hudson* v. *Gulf Oil Co.*, 215 N. C. 422, 2 S. E. 2d 26; *Leary* v. *Virginia-Carolina Joint Stock Land Bank*, 215 N. C. 501, 2 S. E. 2d 570; *Anthony* v. *Covington*, 187 Okla. 27, 100 P. 2d 461; *Feazle* v. *Industrial Hospital Association*, 164 Ore. 630, 103 P. 2d 300; *Brobston* v. *Burgess & Town Council*, 290 Pa. 331, 138 A. 849; *Carter* v. *Atlantic Coast Line R. Co.*, 194 S. C. 494, 10 S. E. 2d 17; *Summers* v. *Bond-Chadwell Co.*, 24 Tenn. App. 357, 145 S. W. 2d 7, cert. den. 145 S. W. 2d 7; *McLaughlin* v. *Chief Consolidated Mining Co.*, 62 Utah 532, 220 P. 726; *Schosboek* v. *Chgo. M. St. P. & P. R. Co.*, 191 Wash. 425, 71 P. 2d 548.

[28] 10 Fletcher, Cyclopedia of Corporations, Sec. 4944; *New York Central and H. RR Co.* v. *United States*, 212 U. S. 481, 491, 497; *Mininsohn* v. *United States*, 101 F. 2d 477, 478; *Rockwood Corp.* v. *Brick Layers Local Union*, 33 F. 2d 25, 27; *Robert E. Hicks Corp.* v. *National Salesmen's T. Assn.*, 19 F. 2d 963, 964, 965; *United States* v. *Nearing*, 252 F. 223, 231; *Union Pacific Coal Co.* v. *United States*, 173 F. 737, 745; *United States* v. *Santa Rita Store Co., et al.*, 16 N. Mex. 3, 113 P. 620; *People* v. *Safe-way Coal Co.*, 242 App. Div. 659, 272 N. Y. S. 658.

[29] The Court of Appeals is in error when it holds that a corporation can be guilty of crime without the intervention of any human being. It may be that if a statute requires a corporation to do some affirmative act under penalty and the corporation does not comply with the statute, it could be guilty of a crime. But in no other respect could a corporation be guilty of crime without a human act being involved. Especially is this true under a charge of conspiracy which is essentially a crime of intent.

ing remains to be imputed to the corporation. It is true the indictment names "unknown" defendants, but the record is wholly barren with reference to any person or persons other than the individual defendants to substantiate any claim of conspiracy.[30]

Consequently, eliminating the testimony of the acquitted defendants, as we must, we are faced here with a total failure of proof to establish any offense on the part of AMA or DMS.

3. Ignoring, arguendo, the propositions just considered, we submit that the presence in the record of highly controversial testimony relating to and coming from the individual defendants was in itself so prejudicial as to require the setting aside of the judgment against petitioners and granting a new trial.[31] Much of the testimony as to

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[30] This differentiates this case from *United States* v. *General Motors Corporation*, 121 F. 2d 376, in which case the court pointed out that there was sufficient additional testimony, *not coming from the acquitted defendants*, to sustain the verdict. Nor is this situation one involving the rule as to inconsistent verdicts announced in *Dunn* v. *United States*, 284 U. S. 390, and the cases following it. Each of those cases was specifically based upon the theory of multiple counts in an indictment wherein each count amounted to a separate offense, and because of that fact inconsistency of verdicts between counts was held to be immaterial. Here there is but a single count, and obviously the rule in the *Dunn* case is not applicable. The decision in *United States* v. *Austin-Bagley Corp.*, 31 F. 2d 229, is also not in point because in that case it appears clearly that the acquittal of the two Government agents had no necessary factual connection with the conviction of the other defendants. The inconsistency of verdict there was only argumentative.

[31] *United States* v. *Standard Oil Co.*, 23 F. Supp. 937, 939, which seems to have approval on this point in *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 243; *Wilson* v. *United States*, 109 F. 2d 895, 896; *Collenger* v. *United States*, 50 F. 2d 345, 347-351.

If there ever was a case where the evidence pertaining to the acts and doings of the alleged co-conspirators found "not guilty" was of such volume and of such a prejudicial nature as to deprive the defendants found "guilty" of an adequate separate consideration of their defense, this is it. The mass of statements made by members of DMS and by committee members of

the acts of the individual defendants offered by the Government to prove that they were engaged in a criminal conspiracy was exceedingly prejudicial in its nature. Such a prejudicial record departs from the American conception of a fair and impartial trial. We think it patently impossible to believe that any jury which had received and heard such prejudicial testimony could possibly have weighed and determined the guilt of AMA and DMS separate and apart from and without reference to the effect on their minds of the prejudicial testimony relating to the individual defendants. We think societies of the reputation and standing of AMA and DMS are fairly entitled to have had the jury pass upon the question of their guilt or innocence under circumstances where their responsibility received a fair separable consideration by the jury, upon the evidence competent and relevant as to them. Such a result was here humanly impossible for the reasons stated, hence a new trial should have been granted.

4. Besides the questions arising out of the verdict, petitioners contend that the evidence is generally insufficient, even if considered as a whole, to sustain any verdict of guilty for the reasons heretofore set forth in the petition. The case is without substance under the Sherman Act and equally without substance, in fact, as showing that the defendants committed any act other than peaceful argument and persuasion. The whole theory of the Government was that if anyone was antagonistic to GHA, disapproved or said anything critical about it, such fact raised a jury question as to resulting restraints, and if the members of petitioners in their meetings expressed objections

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DMS as set forth in the minutes of DMS and its committees which was admitted against all the defendants in this case is amply sufficient to entitle these petitioners to a new trial. Other examples of prejudice are the great mass of background evidence, and the letters, statements, and other activities of the individual defendants.

to or disapproval of GHA then the concert of minds at such meetings was insisted by the Government to be sufficient proof to establish conspiracy against petitioners. The Court of Appeals in its first opinion specifically stated that the defendants were entitled to show that their acts were reasonable regulations of professional practice, and yet the very discussion of what the defendants thought it necessary to do in their own protection is charged as sufficient basis from which a jury can find a criminal conspiracy. Likewise the Court of Appeals holds in its first and second opinions that petitioners had full rights of argument and persuasion, yet when they attempt to exercise either right they are met with the contention that they were restraining GHA in violation of the Sherman Act. The doctrine contended for by the Government would destroy the efficiency of every voluntary organization formed for the protection of the interests of its members, and would prohibit any criticism of GHA.

Obviously, we cannot here set forth at length, detail upon detail, the evidence contained in the very lengthy record in this case. But we desire to make it perfectly clear that we are contending to the Court here that the entire record is utterly insufficient to sustain the charge.

VI.

The court erred in receiving certain evidence on behalf of the United States.

(a) There was received in evidence so-called "background" evidence concerning various actions taken by the AMA throughout the United States, antedating by many years the alleged conspiracy described in the indictment, without any effort being made whatever to prove the nature and kind of the plans involved in the actions at the faraway places or whether such plans were good or evil or bore any

resemblance to GHA. Moreover, such acts were unknown to DMS. Such evidence did not pertain to acts which were unlawful where done. The rulings below conflict with *American Banana Co.* v. *United Fruit Co.*, 213 U. S. 347, 358; *Wilson* v. *United States*, 109 F. 2d 895, 896, and *Eastern States Petroleum Co.* v. *Asiatic P. Corp.*, 103 F. 2d 315, 319. The conviction of petitioners might well be the definite result of the admission of this evidence. The *Chicago Board of Trade* case cited to support the decision below is obviously not in point. The "background" there was in the same jurisdiction, was immediate in point of time, concerned the sole defendant, and related to the precise acts presently involved in the action of the Board. The same is true of the other cases cited by the Court of Appeals on this point. After petitioners' motion to strike such evidence was denied, their requested instructions (R. 1485, 1486, 1492) limiting the probative force of such evidence were refused.

(b) The minutes of DMS, made up by the secretary, who was a defendant, from recollection, contained summaries of alleged statements made by individual defendants, and letters, statements and memoranda were attached thereto. On the theory that the secretary was a co-conspirator, the minutes were accepted as evidence to show that the recorded statements of members were, in fact, made and thereby constituted such members also co-conspirators. The statements made by such members were the discussions, arguments, and statements commonly and usually made in society meetings when discussing matters in which those present were interested. Such evidence was hearsay and should have been rejected on petitioners' objection.

(c) Petitioners objected to the statements, letters, and memoranda of the subordinate employees of the hospitals and of the doctors and interns on the staffs of the hospitals who were not even employees of said hospitals, which were

offered for the purpose of showing that the hospitals were prima facie parties to the alleged conspiracy or for the purpose of showing what the hospitals did, if and when there was a prima facie showing that the hospital was a party to the conspiracy. This evidence was not admissible because such persons were not agents of the hospitals and had no authority to bind the hospitals, and the evidence had no tendency to prove prima facie that the hospitals were parties to the alleged conspiracy. All of such evidence was pure hearsay. Because the hospitals refused privileges to GHA doctors, that fact was asserted sufficient to show a conspiracy between petitioners and the hospitals, although the hospitals were independent corporations and specifically denied any such connection. There is no evidence in the record to support a finding of conspiracy between petitioners and the hospitals.

(d) In a similar way a great mass of evidence was admitted relating to Harris County Medical Society, Washington Academy of Surgery, and Drs. Martel and Young, all of whom were found "not guilty" by directed verdict. Much of this evidence was "hospital" evidence. Damaging evidence pertaining to the activities of these discharged defendants was admitted over objection in the first instance, and then after the record had been permanently poisoned by the admission of such evidence the court directed a verdict in their favor at the close of the Government's case. But the damage had already been accomplished. The evidence of their activities could not have been prima facie evidence that they were co-conspirators, or the court could not have directed a verdict in their favor. Petitioners' motion to strike the "hospital" evidence was denied.

VII

The court erred in refusing evidence offered by petitioners.

The indictment in more than a score of instances charged that the petitioners did the acts complained of "for the

purpose of" restraining GHA. Petitioners denied they had any such purpose, but asserted that on the contrary their purpose was simply to enforce their agreements for self discipline of their members and to protect and defend their own organizations against the proselyting efforts of GHA. In pointing out the purpose actuating petitioners, it, therefore, was essential to show what kind of an organization GHA was and what its acts were which might definitely characterize it. One of the charges made against petitioners was that GHA was refused "approval" and thereby prevented, under society laws, from business engagements or professional consultations with society members and that this approval was withheld in order to restrain GHA. Petitioners took sharp issue and insisted that it was the illegal, improper, and unethical status of GHA which was the reason for the non-approval of employment by GHA of petitioners' members and that the question of approval had reference only to the enforcement of agreed rules and regulations consented to by those members. If GHA's activities were illegal and petitioners' members accepted employment from it for the purpose of furthering such activities, they would be equally guilty with GHA of violating the law.[32]

The Government objected to the receipt of evidence intended to show the character and illegality of GHA, asserting petitioners' purpose was immaterial if GHA was restrained. The court sustained the position of the Government in its entirety and refused to permit petitioners to introduce the desired evidence or to argue such questions to the jury. During the trial, for the purpose of clarifying the issue, petitioners presented to the court written and

[32] The proffered evidence was also admissible to show that GHA ran afoul of Sec. 8 of the Norris-LaGuardia Act, appendix, p. 58 *infra*, which is to the effect that injunctive relief cannot be granted to any complainant who has failed to comply with any obligation imposed by law, if complainant is involved in a dispute within the Act.

oral offers of proof,[33] which tended to prove the following ultimate facts:

(a) that GHA was engaged in the corporate practice of medicine contrary to law, and was engaged in an insurance operation contrary to law, and was otherwise violating Federal statutes, and that it had been so held by public officials and private legal opinion, and petitioners so believed;

(b) that GHA was subsidized by public funds contrary to law and by private funds; was an instrumentality of a plan to destroy the private practice of medicine; was economically and financially unsound; sold medical services below cost; and was in unfair competition with the doctors who were members of the petitioning medical societies;

(c) that GHA was receiving and expending money of Home Owners Loan Corporation[34] and using Federal purchasing discounts contrary to law; and that a committee of the House of Representatives of Congress (R. 1420) and the Comptroller General of the United States had so held (R. 918-920), and petitioners so believed;

(d) that GHA was conspiring with HOLC to violate a Federal statute[35] pertaining to the assignment of wages of Federal employees, and conspiring with HOLC to defraud the United States in taking money of HOLC for the purpose of its operations; and that the Comptroller General of the United States had so held, and petitioners so believed;

(e) that coercion was used on behalf of GHA to cause employees of HOLC, the Federal Savings and Loan Insurance Corporation, and Federal Home Loan Bank Board, to become members of GHA;

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[33] R. 910-920, 940-945, 961, 1011, 1013-1025, 1355, 1356, 1363, 1420, 1429-1435, 1438, and 1440.

[34] Hereinafter referred to as HOLC.

[35] The assignments of the wages and salaries of employees of HOLC to GHA were invalid. R. S. Sec. 3477, May 27, 1908, c. 406 (35 Stat. 411), 31 U. S. C. 203. The Comptroller General so held (R. 919, 920).

(f) that GHA and others on its behalf solicited employees of HOLC and other departments of the United States Government to become members of GHA;

(g) that GHA advertised for members;

(h) that GHA violated the Constitution, By-Laws, Rules, and Principles of Medical Ethics of DMS, and the Principles of Medical Ethics of the AMA and of the medical profession;

(i) that GHA could not, as set up, render good medical services and was not rendering good medical services, and was not rendering the medical services which it agreed to render;

(j) that the intent and purpose of the petitioners were not as charged in the indictment, but on the contrary were to protect their members, their societies, and their constitutions, by-laws, rules and principles of medical ethics; and

(k) that the alleged contemplated restraints were not unreasonable restraints and not direct restraints.

The court denied the proffered evidence and refused to permit any argument to the jury thereon.

We think the refusal by the trial court of petitioners' proffered evidence was obviously erroneous. The decision in *Chicago Board of Trade* v. *United States*, 246 U. S. 231, reversed a similar ruling made on behalf of the Government and said (p. 238):

> "The history of restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained, are all relevant facts. This is not because a good intention will save an otherwise objectionable regulation or the reverse; but because knowledge of intent may help the court to interpret facts and to predict consequences. The District Court erred, therefore, in striking from the answer allegations concerning the history and purpose of the Call rule and later in excluding evidence on the subject."

The proffered evidence was not merely reasons or excuses for what was done. It went to the very heart of the intent and purpose of petitioners and also to the reasonableness and directness of the alleged restraint. The intention and purpose of petitioners were to protect their societies, their constitution, by-laws, rules, and principles of medical ethics, and the illegality of the practices of GHA, if true, struck at the very heart of these things. From a great mass of evidence, all of which was perfectly legal in and of itself, the Government insisted upon an ulterior evil intent and purpose. Since legality is to be presumed, the evidence offered should have been admitted in order to establish that such lawful acts were done for lawful purposes.

The proffered evidence also went to the question whether the alleged restraints affected the market either by fixing prices or suppressing competition to the extent that prices were substantially affected, to the injury of the public.

VIII

The court erred in refusing instructions requested by petitioners and in charging the jury.

Many of the petitioners' requests for instructions to the jury were refused, and many requests of the Government were, over objection, granted. The charge followed the Government's theory of the case. The discussion between court and counsel pertaining to the requested instructions (R. 1456-1496) disclosed the theories of the prosecution and the defense.

The Court of Appeals erroneously affirmed the action of the trial court in refusing to charge at petitioners' request as follows: that a conspiracy to be a violation of the Act must, by reason of purpose or intent prejudice the public interests by unduly restricting competition or unduly obstructing trade (R. 1471, 1472, 1494); that where a com-

bination or conspiracy was entered into with the object of properly and fairly regulating the practice of medicine, that would not violate the Act; that if the jury found that the alleged conspiracy was a reasonable regulation of the practice of medicine and that its effect on trade is but indirect, that would not violate the Act (R. 1472, 1476); that if the jury found that petitioners did not intend to enter into a conspiracy or further any unlawful purpose, a conviction would not be warranted (R. 1480); that if GHA was engaged illegally in the practice of medicine, petitioners could enforce their rules and regulations forbidding members from aiding and abetting the illegal practice of medicine (R. 1474); that petitioners might oppose and criticize GHA and that, without more, would not violate the Act (R. 1484, 1485); that petitioners had the right to approve and disapprove all types of medical practice and make known their conclusions (R. 1477, 1478); that petitioners had the right of legitimate persuasion and reasoned argument to support what they believed was fair competition in the medical profession (R. 1477, 1492); that acts done by AMA prior to January 1, 1937, were only admissible as furnishing a background for a connection by AMA with the alleged conspiracy and cannot be used for the purpose of establishing the existence of the conspiracy (R. 1485, 1486); that the Milwaukee situation could only be considered as background to explain other testimony in the case (R. 1492); that if petitioners acted in self-interest, that is, protecting themselves from attack and opposition, that would not be a conspiracy to violate the Act (R. 1486); that DMS could adopt a constitutional provision forbidding members to have professional relationships with organizations engaged in the practice of medicine until such organizations had been approved by DMS and that membership in DMS is conditional upon compliance with the constitution (R. 1491); that Washington hospitals have the right to pass upon applicants for privileges

as the hospitals deem desirable, proper and necessary (R. 1491); that if the jury found that in the GHA arrangement the proper doctor and patient relationship was destroyed and the doctors rendered the hired servants of GHA, then GHA was practicing medicine illegally (R. 1475) and that petitioners, if appropriate facts were found, were under the Clayton and Norris-LaGuardia Acts and therefore, not guilty (R. 1493).

The Court of Appeals erroneously overruled petitioners' contentions that the charge to the jury was incorrect in the following particulars:

Gov. Instruction 13, given, charged in part (R. 1459, 1499) "* * * every person, who knowing of a conspiracy does any act or makes any statement intended to further the objects thereof, does thereby become a party to the unlawful conspiracy."

Gov. Instruction 14, given, (R. 1459, 1460, 1508) omitted one of the purposes of restraint charged in the indictment, i. e., restraining members of GHA, and the charge (R. 1508) stated that petitioners could be convicted if they were guilty of at least one of the purposes of restraint charged. (There was only one count; conspiracy is an agreement and must be proved as laid).

Gov. Instruction 22, given, (R. 1460, 1461, 1497, 1498) charged that if the jury found that petitioners were engaged in a conspiracy as charged, it was unnecessary for them to decide whether GHA violated the Principles of Medical Ethics, and it was immaterial that members of GHA may not have had freedom of choice of physicians or that GHA solicited Government employees to join it and that none of these matters should be considered by the jury in reaching their verdict.

Gov. Instructions 23 and 24, given, (R. 1464, 1467, 1468) charge that the quality of medical care rendered by GHA, its financial condition and its subsidies are irrelevant.

The charge stated (R. 1507) "one may also be liable for an overt act, though actually performed by another, if he knowingly instigates or supports the same by advising, encouraging, or abetting it"; and (R. 1507) "* * * acts and declarations of each party, shown to be a conspirator, in furtherance of the conspiracy, may be considered by the jury, in determining the guilt of others who are *accused*"; and (R. 1510) "as to corporate defendants they will be responsible if authorized officers acting for the corporation or in the name of the corporation, did acts within the apparent scope of the corporate powers, in forming *or* furthering the alleged conspiracy"; and (R. 1510) "* * * rules and regulatory actions cannot be justified where the real purpose *or* the natural results, are to interfere with free competition", and throughout the charge the court stated that the different methods and quality of medical care (R. 1498, 1512), the legality of GHA, its financial unsoundness, source of financial support or the fact that it was subsidized, petitioners' belief of illegality of GHA, and whether GHA violated medical ethics (R. 1497, 1498) were all irrelevant and immaterial. The denial of petitioners' instructions and the charge, as given, amounted to a directed verdict against petitioners.

CONCLUSION.

It is respectfully submitted that the petition should be granted and the judgments below reversed.

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July 3, 1942.

APPENDIX.

Sec. 2 of the Sherman Act of July 2, 1890, c. 647 (26 Stat. 209), 15 U. S. C. Sec. 3, reads in part:

"Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce * * * of the District of Columbia, or in restraint of trade or commerce between * * * the District of Columbia and any state or states or foreign nations, is declared illegal."

Sec. 1 of the Clayton Act of October 15, 1914, c. 323 (38 Stat. 730), 29 U. S. C. 53, reads:

"The word 'person' or 'persons' wherever used in section 52 of this title shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country."

Sec. 6 of the Clayton Act of October 15, 1914, c. 323 (38 Stat. 731), 15 U. S. C. 17, reads in part:

"The labor of a human being is not a commodity or article of commerce."

Sec. 20 of the Clayton Act of October 15, 1914, c. 323 (38 Stat. 738), 29 U. S. C. 52, reads:

"No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

"And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States."

Sec. 4 of the Norris-LaGuardia Act of March 23, 1932, c. 90 (47 Stat. 70), 29 U. S. C. 104, reads:

"No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any

strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interest in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified; regardless of any such undertaking or promise as is described in section 103 of this title."

Sec. 5 of the Norris-LaGuardia Act of March 23, 1932, c. 90 (47 Stat. 71), 29 U. S. C. 105, reads:

"No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 104 of this title."

Sec. 6 of the Norris-LaGuardia Act of March 23, 1932, c. 90 (47 Stat. 71), 29 U. S. C. 106, reads:

"No officer or member of any association or organization, and no association or organization participating or

interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof."

Sec. 8 of the Norris-LaGuardia Act of March 23, 1932, c. 90 (47 Stat. 72), 29 U. S. C. 108, reads:

"No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration."

Sec. 13 of the Norris-LaGuardia Act of March 23, 1932, c. 90 (47 Stat. 73), 29 U. S. C. 113, reads:

"When used in sections 101-115 of this title, and for the purposes of such sections—(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or association of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as defined in this section) of 'persons' participating or interested' therein (as defined in this section).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the

same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft or occupation.

(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term 'court of the United States' means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.".

The Act of Feb. 27, 1929, c. 352 (45 Stat. 1326), known as the "Healing Arts Practice Act" (D. C. Code, 1940, Title 2, sections 2-101 to 2-130) is all inclusive and comprehends every kind and character of medical treatment.

Sec. 2-101 (a) defines "disease."

Sec. 2-101 (b) defines "The Healing Art" to mean:

"the art of detecting or attempting to detect the presence of any disease; of determining or attempting to determine the nature and state of any disease, if present; of preventing, relieving, correcting or curing, or of attempting to prevent, relieve, correct or cure any disease; of safeguarding or attempting to safeguard the life of any woman and infant through pregnancy and parturition; and of doing or attempting to do any of the acts enumerated above;"

Sec. 2-101 (c) provides:

" 'To practice' means to do or attempt to do, or to hold oneself out or to allow oneself to be held out as ready to do, any act enumerated in subsection (b) of this section as constituting a part of the healing art, for a fee, gift, or reward, or in anticipation of any fee, gift, or reward, whether tangible or intangible."

Sec. 2-102 forbids the practice of the healing art without a license.

Sec. 2-103 establishes a commission of licensure, prescribes for professional education, minimum educational or training requirements, the taking of examinations for fitness to practice by applicants, and the procedure for issuing licenses. The section renders it impossible for other than a natural person to practice the healing art legally.

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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

October Term, 1942

No. 201.

AMERICAN MEDICAL ASSOCIATION, a Corporation, *Petitioner*,

vs.

UNITED STATES OF AMERICA, *Respondent*.

No. 202.

THE MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA, a Corporation, *Petitioner*,

vs.

UNITED STATES OF AMERICA, *Respondent*.

REPLY BRIEF FOR PETITIONERS.

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WILLIAM E. LEAHY,
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PRESS OF JUDD & DETWEILER, INC., WASHINGTON, D. C.

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vs.

UNITED STATES OF AMELICA, *Respondent*.

REPLY BRIEF FOR PETITIONERS.

Under "Questions Presented" respondent boldly states, as though it were definitely established and not in issue, that petitioners were engaged in a combination to hinder and obstruct by means of boycotts the operation of Group Health Association, Inc.,[1] and then states that the principal question presented is whether the combination was "in re-

[1] Hereinafter referred to as GHA.

straint of trade" within the meaning of Sec. 3 of the Sherman Act. Respondent's method of thus stating the "Questions Presented" is wholly unwarranted. Petitioners insist there is no lawful evidence in the record tending to show that they or either of them were engaged in such a combination or conspiracy. Respondent boldly and arbitrarily assumes the existence of the very facts which petitioners seek, by this petition, to refute.

REPLY TO RESPONDENT'S STATEMENT.

Respondent states (Br. 11) "When two members of" the Medical Society of the District of Columbia [2] "joined the staff of GHA, the DMS instituted proceedings to expel them". That statement is misleading. After a full hearing, wherein Dr. Scandiffio was represented by the General Counsel of the Home Owners' Loan Corporation and four of his legal assistants, the Executive Committee made findings of fact to the effect that Dr. Scandiffio had violated the Constitution of DMS as charged and recommended to the membership of DMS that he be expelled from DMS. The membership of DMS voted the expulsion of Dr. Scandiffio for the violation of its Constitution as charged. He appealed to the American Medical Association[3] and that appeal is pending (R. 1067).

Respondent quotes (Br. 12) the November 3, 1937 resolution of DMS. That resolution was submitted to DMS by Dr Willson on his sole initiative. It was not the result of any combination or conspiracy. (R. 1270) Its resolving part directs the Hospital Committee to give "study and consideration to all phases of this subject and *report* back to the society * * * its recommendations * * *." Dr. Willson testified, and his testimony was undisputed,

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[2] Hereinafter referred to as DMS.
[3] Hereinafter referred to as AMA.

that his sole purpose in submitting the resolution was to kill the "Sprigg letter" (the contents of which are not of record), which it succeeded in doing (R. 1269-1272, 1285-1299).

The resolutions of DMS of December 1, 1937 (Gov. Ex. 37, Br. 13) and March 28, 1938 (Gov. Ex. 324, Br. 13, 14) go no further than recommendation. Nothing was ever done by DMS or anyone else concerning those resolutions. The hospitals, through their officers and staff members, testified they considered the December 1 resolution a mere recommendation and did not consider it either coercion or a threat (R. 1115, 1161, 1318, 1320, 1321, 1323, 1336). Nothing ever was done concerning the hospitals that ignored it.

Respondent states (Br. 14, 15) that the action of DMS "was undertaken with the knowledge and approval of the AMA" and that "the AMA was in a large measure responsible for shaping the hostile policy of its local affiliate toward GHA * * *," and that "AMA was directly instrumental in obtaining the exclusion of the GHA doctors from the Washington hospitals." Petitioners insist there is no competent evidence in the record to support any such conclusions. The references cited by respondent do not warrant any such statements.

RESPONDENT'S ATTITUDE ON THE PETITION FOR CERTIORARI.

I.

Respondent refers to a previous petition by it for certiorari in this case (No. 377, October Term, 1939, den. 308 U. S. 599) and a previous petition by these petitioners for certiorari (No. 959, October Term, 1939, den. 310 U. S. 644), both of which petitions pertained to the demurrer of petitioners to the indictment. In those petitions for certiorari

respondent took an entirely different position in this Court than it now takes. Respondent now argues in opposition to certiorari that "the decision is probably limited in effect to the District of Columbia, that the question has received comprehensive treatment by the Court of Appeals and that the decision appears to be clearly correct." Such an argument is a curious method of emasculating the rules of this Court concerning certiorari. The two opinions of the Court of Appeals, *United States* v. *American Medical Association, et al.*, 72 App. D. C. 12, 110 F. 2d 703, and *American Medical Association, et al* v. *United States* (R. 1886), are not limited in effect to the District of Columbia, as everyone knows, but even if they were, the granting of certiorari is not dependent upon either the "local" effect of a decision, a prior certiorari ruling on interlocutory orders, the claimed comprehensive treatment by a Court of Appeals, or the assertion of a respondent that the decision below is correct.

The argument now made by respondent in opposition to certiorari is interesting in view of the fact that it has previously taken exactly the contrary position. In contending that this case involves national effects and policies, and was not local in scope, respondent in its petition for certiorari stated (No. 377, October Term, 1939, p. 9, den. 308 U. S. 599):

> "The public interest will be promoted by prompt settlement in this Court of the questions involved. The legal status of policies and practices of a controlling group of a most important and respected profession is in issue. Although the specific issues here involved relate immediately to the District of Columbia, their *significance is nation-wide.* A pronouncement by this Court upon the legality here of the activities for which defendants have been indicted *will affect the conditions of medical practice throughout the United States.*"

> "The question is *so important to the Government* and the public on the one hand, and to the defendants and the dominant elements controlling organized medicine on the other, that *neither side* can be expected to accept as final an adverse decision by the Court of Appeals." (Italics supplied).

In arguing that it made no difference how the Court of Appeals treated the question involved in this case that *this Court* should finally pass upon them, respondent stated (pp. 9, 10):

> "• • • However that court (Court of Appeals) might decide the question, application would be made to this Court for an authoritative answer. In view of the nature of the issues, it is probable that this Court would then see fit to grant the petition for a writ of certiorari. • • •"
>
> "Until the decisions of the lower courts have been reviewed by this Court they will doubtless be factors in shaping policies for the future. If eventually the indictment is to be upheld, it would be unfortunate for both sides in this controversy if the period before final determination should be so extended as to permit policies to be formed and executed in reliance on decisions which are not final."

In arguing that the questions here involved have not been, but should be, settled by this Court, regardless of what decisions the "lower courts" rendered, respondent stated (p. 12):

> "The court below has decided questions of substance relating to the construction and application of a statute of the United States, which have not been, but should be, settled by this Court. The case presents for the first time the question of the application of Section 3 of the Sherman Anti-trust Act to restraints upon the business of an organization engaged in arranging for the medical care of members, to restraints on the business of hospitals, and to restraints upon medical practice."

Respondent in its brief in opposition to petitioners' previous petition for certiorari to this Court stated (No. 959, October Term, 1939, pp. 13, 14, den. 310 U. S. 644):

> "Petitioners contend that the court below decided an important question involving the construction of the Sherman Act which has not been, but should be, settled by this Court. This is whether under Section 3 a combination to prevent, by boycott and coercion, competent doctors from freely pursuing their chosen occupation in the District of Columbia constitutes a forbidden combination in restraint of trade. It may be assumed that this question of statutory interpretation is a novel one of importance sufficient for this Court to settle, but, for the reasons heretofore given, review should not be granted at this preliminary stage of the proceedings. In addition, it is desirable that the legal question presented be decided against a full factual background. Trial of the issues will develop the detailed facts as to the purposes, operation, and effect of petitioners' combination, which may well be essential to proper decision."

Thus respondent, where the issue was the correctness of the judgment of the District Court on the demurrer to the indictment insisted that the issues involved were of sufficient importance for decision by this Court. Where the issue involved was the correctness of the judgment of the Court of Appeals on the demurrer to the indictment, respondent conceded that the issues involved were of sufficient importance for decision by this Court, but argued certiorari should await the time when the issues could be decided with a full factual background.

So we are compelled to the conclusion that respondent's present opposition to certiorari comes with poor grace. If the issues presented by the previous petitions for certiorari were important then, they are just as important now.

In addition *other* exceedingly important questions that go to the heart of the convictions, and involving the usual reasons for granting the writ of certiorari, are presented.

1. Respondent attempts (Br. 19) to inject "commercial competition" and "the market" into this case. The attempt comes a little late. No such elements were involved in either the indictment or the evidence. Those phrases are a belated attempt to bring this case within the law as declared in *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469. The indictment was drawn and the case was tried on an entirely different theory, i.e., that restraint on any individual in earning a livelihood violates the Sherman Act. In fact, respondent conceded on the first appeal (*United States* v. *American Medical Association, et al.*, 72 App. D. C. 12, 110 F. 2d 703, Br. 24) that:

> "The present case, like other Sherman Act cases, has to do with restraints in a field of economic activity. Broadly speaking, it *differs* from previous cases only in that some of *these restraints are, not upon commercial and industrial activities*, but upon the marketing of *a professional service*. On analysis it will be found that the case involves considerations of public interest and *individual* freedom that are common to all Sherman Act cases". (Italics supplied.)

Such a concession is fatal to this prosecution if the opinion in the *Apex* case is followed. *Fashion Guild* v. *Trade Commission*, 312 U. S. 457, 466, is not to the contrary.

2. Respondent says (Br. 20, 21) "* * * the question * * * of substance relating to the construction" of the Sherman Act "relates to activities wholly within the District of Columbia" and is "the equivalent of the construction of a statute limited * * * to the District * * *." Respondent then argues that the construction of Sec. 3 of the Sherman Act is "unlikely" to "influence the enforce-

ment of the Sherman Act beyond the District * * *", arguing the practice of medicine elsewhere is an *intrastate* activity. Respondent cites *Del Vecchio* v. *Bowers*, 296 U. S. 280, 285, but that decision holds that construction of a portion of the *Longshoremen's* and Harbor Workers' Compensation Act by the Court of Appeals of the District of Columbia warrants certiorari because, while conceding that the Act is a "Compensation Act" for the District of Columbia, it is also in effect elsewhere in the country. "Restraint of trade" in Sec. 3 of the Sherman Act must mean the same as it does in Section 1, and Sec. 1 is effective elsewhere in the country. Hence this citation really supports the petition for certiorari.

Respondent's earlier positions that the issues involved are "novel", of "such importance", have "nation-wide application", will shape future policies throughout the nation, and no matter how decided by the court below, ought to be *settled finally by this Court*, should be contrasted with its present position of opposition to certiorari.

Moreover, respondent's premise is unsound for several reasons: *First*, Sec. 3 of the Sherman Act (15 U. S. C. 3) covers not only the District of Columbia but

> "trade or commerce in any Territory of the United States or of the District of Columbia, or * * * between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations".

Thus the decisions below can control and influence policies in enforcing the Sherman Act outside the District as respondent has previously conceded. Furthermore "restraint of trade" in one section of the Sherman Act undoubtedly means the same as "restraint of trade" in another section thereof. *Second*, the construction placed

upon the Clayton and Norris-La Guardia Acts by the decisions below is not confined to the District. *Third*, subdivisions (b) and (c) of Sec. 5 of Rule 38 of this Court make "local decisions" where a conflict exists, or they decide questions of "general importance", or where they do not give proper effect to decisions of this Court, or where they relate to the construction of a statute of the United States, proper grounds for certiorari.

Respondent's attempt to have this Court confine the writs of certiorari to a consideration of the construction of Sec. 3 of the Sherman Act alone, indicates it is sensitive to the inconsistent positions it has taken in this case. We submit that this Court cannot decide the issues satisfactorily to itself by limiting the scope of the writs.

II.

Respondent asserts in substance (Br. 22):

First, That even if there is no evidence in the record to support the verdict this Court will not concern itself with that fact. We do not believe that this Court will permit the conviction of these petitioners to stand unless it is of the opinion that there is substantial evidence in the record to support the verdict.

Second, That the rulings of the trial court concerning admissibility of evidence and on the instructions to the jury, and the petitioners' claim that the indictment contains prejudicial and irrelevant matter do not require any discussion beyond the comments made in the margin (Footnote 37, Br. 22). In that footnote respondent incorrectly states that "The evidence (of conduct of the AMA outside the District and long antedating the alleged conspiracy) was received only to show the plan and purpose of the American Medical Association in the commission of the illegal acts charged * * *." The fact is that such

evidence was offered against both AMA and DMS and was received against both AMA and DMS, and there was no evidence tending to show that DMS had knowledge of any of the activities antedating the alleged conspiracy. The evidence complained of was admitted over timely objections of both AMA and DMS, and the motion of both AMA and DMS to strike such evidence was denied. Furthermore petitioners' requested instructions (R. 1485, 1486, 1492) limiting the probative force of that evidence to background, plan or purpose, were refused. *Fashion Guild* v. *Trade Commission*, 312 U. S. 457, 468, does not sustain the action of the trial court in admitting the evidence of which petitioners complain.

1. Respondent states (Br. 23) that the cases cited by petitioners to show that Sec. 20 of the Clayton and Norris-La Guardia Acts preclude this prosecution "are not in point," on the issue posed by petitioners, because it says the issue involved here is the way in which doctors shall provide medical care in a community. It goes without saying that is not the issue involved here. The charge is that petitioners restrained GHA in its employment of doctors to render medical services to the members of GHA. There is no charge in the indictment pertaining to the way doctors shall provide medical care. Respondent's real position necessarily is that a dispute over the employment of a doctor by a corporation like GHA is not the kind of a dispute and does not involve an employee "which the Act was intended to protect". How, if doctors are in "trade" under the Sherman Act, and are in a dispute over employment, they are not within the words "trade" or "occupation," as those words are used in the Clayton and Norris-La Guardia Acts, is difficult for us to understand. It seems to us that it must be conceded by all reasonable men that if a doctor is included within the meaning of the

word "trade" in the Sherman Act he should also be within the meaning of the words "trade" or "occupation" in the Clayton and Norris-La Guardia Acts. If that is true, the question presented is whether there was a dispute in this case concerning terms and conditions of employment in which petitioners were both directly and indirectly interested. Respondent seems to concede that there was such a dispute and that petitioners were interested therein, but that the Acts do not apply under the circumstances of this case.

2. Respondent attempts (Br. 25) to belittle the importance of the questions whether GHA was illegally practicing medicine and insurance. The two decisions below are far-reaching and open the door to corporate practice of medicine heretofore unanimously declared illegal by practically all the decisions of the federal and state courts of this country. Whether or not a *corporation* for profit, or not for profit, can employ doctors on a full time basis to render medical services to members of the corporation at the offices of the corporation, is of sufficient importance to be settled by this Court. Whether a corporation like GHA can evade the insurance laws of the District of Columbia and conduct an insurance business without complying with the statutes pertaining thereto is also of sufficient importance to be settled by this Court.

Respondent (Footnote 42, Br. 27) argues that the requirement of two *animate* conspirators concededly necessary to sustain a charge of conspiracy, is satisfied because two defendants were convicted. The fallacy of that argument is plain. Conspiracy is a crime of *intent* and must involve *two human minds. Where no human agents are convicted or involved by the evidence*, the crime cannot exist. Hence, saying that *two corporations* are left is an affront to logic and reason. Respondent's further statement (Footnote 42, Br. 27) that the principal and agent, master and servant

cases cited by petitioners (Petition, p. 41, Footnote 27) are confined to cases where the act of the servant is "unauthorized" is flatly incorrect. None of the 38 cases cited, including decisions of this Court and of courts of review of twenty-five states, involved the unauthorized act of a servant. Each case cited is in point and all of them hold that verdicts against the master, principal or corporation must be set aside where all of the agents or servants through whom the master, principal or corporation could have acted in committing the "tort" or "crime" in question, are acquitted. Eliminating from the record the evidence pertaining to the acts and doings of the individual defendants found "not guilty" there is not a scintilla of evidence to support the verdict.

The concession in respondent's brief (p. 21) that "the decision below may have persuasive effect outside the District and involves important interests," is something of an understatement in view of the publicly expressed intention of the Department of Justice to apply the decision to situations arising outside the District. Respondent, apparently sensitive about its inconsistent position, indicated a possible acquiescence in certiorari (Br. 21) if the same is limited to the construction of the Sherman Act *alone*. We assume such a construction would necessarily involve a construction of the applicable sections of the Clayton and Norris-La Guardia Acts. Acquiescence gives no right to certiorari. We have some doubt whether it is even in aid of a petition, but we are earnestly exercised lest the Court, in the proper protection of the scope of its certiorari power, should accept respondent's suggestion that certiorari be confined to questions involved in the interpretation of the Sherman Act alone, which would necessarily involve the interpretation of the Clayton and Norris-La Guardia Acts.

The decision of the Court of Appeals as to the other important questions referred to by respondent (Br. 22-27)

should never be permitted by this Court to stand, unless and until it has examined those questions and investigated this record, and is, therefore, able to reach a reasoned conclusion with respect to the soundness of the decisions below.

Concretely, we do not think it has yet been held by this Court:

1. That a restraint on activities forbidden by federal statutes is a basis for prosecution under the Sherman Act.

2. That under an indictment for conspiracy to violate Sec. 3 of the Sherman Act, evidence is admissible against all the defendants, of the activities of *one* of the defendants throughout the United States antedating by many years the beginning of the alleged conspiracy.

3. That petitioners, charged with acts "for the purpose of causing unlawful restraints," may not offer evidence to show an entirely different purpose, under the ruling announced by this Court in *Chicago Board of Trade* v. *United States*, 246 U. S. 231, 238.

4. That the rule as to inconsistent verdicts, as announced in *Dunn* v. *United States*, 284 U. S. 390, *based solely on the fact that the indictment involved presented multiple counts*, is an authority for holding that a legally impossible verdict is good, where the indictment contains only a *single count*.

5. That despite the acquittal of all of the individual defendants who actually did the acts which it is asserted were unlawful, without other evidence in the record sufficient to sustain the charge in the indictment, the evidence of the acts and doings of the acquitted individual defendants may still be used to support a verdict of guilty against corporate defendants, against whom no other evidence existed. This is why we cited in the petition the conspiracy and respondeat superior cases. Respondent cites (Br. 8-10) some of this very evidence relating to the defendants who were acquitted, notwithstanding such acquittal, as tending to show the guilt

of the petitioners here, regardless of the fact that such liability can only be predicated upon the theory of guilt, by *imputation*. The *General Motors* case referred to by respondent [4] specifically found that evidence, other than that concerning the acquitted defendants, existed, sufficient to sustain the verdict. But here the Court of Appeals held that petitioner corporations might be guilty, whether or not there was any other evidence whatsoever relating to the charge in the indictment.

We do not think such fundamentally important positions can be "whistled down the wind" with the casual statement that they are local and unimportant. One of the petitioners is the professional organization of the many physicians in the District of Columbia, the seat of the Nation's Capitol, and the other petitioner is the principal professional organization of the great majority of physicians practicing throughout the United States. The important points presented by our petition, we submit, require a more candid and impartial treatment than has been afforded by respondent's brief.

CONCLUSION.

It is respectfully submitted that the Petition herein should be granted and the judgments below reversed.

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[4] *United States v. General Motors Corporation*, 121 F. 2d 376, 411.

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BRIEF FOR PETITIONERS

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OPINIONS BELOW.

The District Court sustained a demurrer to the indictment, *United States* v. *American Medical Ass'n*, 28 F. Supp. 752. The Court of Appeals reversed, *United States* v. *American Medical Ass'n*, 72 App. D. C. 12, 110, F. 2d 703.

A trial was had in the District Court and all of the defendants, except American Medical Association [1] and Medical Society of the District of Columbia [2] were found not guilty. The jury found the petitioners guilty, and there were judgments on the verdict. The Court of Appeals affirmed, *American Medical Ass'n.* v. *United States*, — App. D. C. —, 130 F. 2d 233.

JURISDICTION.

The jurisdiction of this Court is invoked under Sec. 240 of the Judicial Code as amended by the Act of February 13, 1925 (43 Stat. 938), 28 U. S. C. 347.

QUESTIONS PRESENTED [3]

1. Whether the practice of medicine and the rendering of medical services as described in the indictment are "trade" under Sec. 3 of the Sherman Act.

2. Whether the indictment charged or the evidence proved "restraints of trade" under Sec. 3 of the Sherman Act.

3. Whether a dispute concerning terms and conditions of employment under the Clayton and Norris-La Guardia Acts was involved, and, if so, whether petitioners were interested therein, and therefore immune from prosecution under the Sherman Act.

STATUTES INVOLVED.

The statutes involved are Sec. 3 of the Sherman Act, Secs. 1, 6 and 20 of the Clayton Act, and Secs. 4, 5, 6, 8 and 13 of the Norris-La Guardia Act.[4]

---

[1] Hereinafter referred to as AMA.

[2] Hereinafter referred to as DMS.

[3] The "questions presented" were limited by the writs of certiorari.

[4] The statutes involved are contained in the appendix hereto, pp. 62-66, *infra*.

STATEMENT.

The indictment charges (R. 14, 15) petitioners with engaging in a conspiracy:

> (1) To restrain Group Health Association, Inc.,[5] a corporation, in furnishing through monthly salaried full-time employee-doctors, medical care to its members and their dependents;
>
> (2) To restrain members of GHA in obtaining such medical care;
>
> (3) To restrain GHA doctors;
>
> (4) To restrain other doctors in the pursuit of their callings; and
>
> (5) To restrain the Washington hospitals.

Petitioners contend that the indictment did not charge nor the proof show an offense under the Sherman Act for three basic reasons, any one of which is fatal to this prosecution.

First: because the activities alleged to have been restrained were not commercial, and hence not trade and commerce within the meaning of Sec. 3 of the Sherman Act.

Second: because the indictment does not charge, nor the proof show, that the alleged restraints fixed prices or suppressed competition to the extent that market prices were substantially affected, to the injury of the public.

Third: because the alleged restraints arose out of a controversy or dispute concerning terms and conditions of employment of doctors, which, if doctors are tradesmen, was within the excluding purview of the Clayton and Norris-La Guardia Acts.

This case presents a controversy concerning terms and conditions of employment of doctors in the medical profession. AMA, the national organization, DMS, the local organization, and the doctors who are members of those or-

[5] Hereinafter referred to as GHA.

ganizations have long observed and followed a code of professional ethics (R. 1108). That code has been supplemented by association rules and regulations (R. 1108) initiated by and agreed to by the members themselves and made, by them, a necessary condition of membership in their medical organizations.

GHA sought to engage in the practice of medicine by the device of opening a clinic, including offices for a staff of doctors (R. 368), whom it employed by the month, on a full-time salary basis. That arrangement, it was generally believed by petitioners (R. 340, 373), as well as by the law enforcement authorities of the District (R. 373), was illegal.

GHA was incorporated on February 24, 1937, under a non-commercial statute of the District of Columbia.[6] GHA opened its clinic on November 1, 1937. It immediately ran afoul of the law-enforcement officers of the United States and the District of Columbia and Congress.

The respondent, acting through the United States Attorney, after inquiring into GHA's scheme, on January 15, 1938, notified GHA that unless it ceased operations immediately and wound up its affairs, respondent would enjoin GHA and cause its involuntary dissolution, because GHA was illegally engaged in the practice of medicine and illegally engaged in an insurance business (Petitioners' offer of proof, R. 1424).

The District of Columbia, acting through its Corporation Counsel and Insurance Commissioner, after inquiring into GHA's scheme, on January 15, 1938, notified GHA that it was improperly incorporated and was illegally engaged in the insurance business, and unless GHA complied with the law, injunctive and other legal proceedings would be

[6] The Benevolent Corporations Act of March 3, 1901, C. 851 (31 Stat. 1283); Act of June 30, 1902, C. 1329 (32 Stat. 533); D. C. Code 1940, Title 29, Secs. 29-601 to 29-605.

brought to end GHA's illegal operations (Petitioners' offer of proof, R. 1424).

GHA received $40,000 from Home Owners Loan Corporation [6a] ostensibly for medical services to be rendered to it (R. 375, 467; Petitioners' offer of proof, R. 1387-1388). When news of this arrangement "leaked out", a Congressional investigation started (R. 467). Senator McCarran requested that the Comptroller General investigate this unauthorized use of federal funds (Petitioners' offer of proof, R. 911).

The Comptroller General investigated GHA and was furnished the facts concerning GHA and its acquisition of $40,000 of public money and other Government property. The Comptroller General rendered to the Senate his formal opinion, which was made public, showing that GHA was using Government property and discounts, had received $37,357.65 from funds of the United States without complying with its contract and without providing the services agreed upon, that GHA also had set up at HOLC an unlawful assignment of wages or "check-off" system (R. 376-378) whereunder dues were deducted from the salaries of HOLC employees (R. 918, 919) and that the payments of federal funds by HOLC to GHA were made and incurred without authority of law (Petitioners' offer of proof, R. 915-920).

Congress itself investigated GHA's activities and its contract with HOLC (R. 467, 468) and the Committee on Appropriations of the House of Representatives reported to Congress that it was unanimously of the opinion that the $40,000 contribution of HOLC to GHA was not authorized by law (Petitioners' offer of proof, R. 1420).

GHA was subsidized by the Twentieth Century Fund (R. 375) and other private funds (Petitioners' offer of proof, R. 1011, 1013-1025) and was advertising for and soliciting members and coercing federal employees to become members (Petitioners' offer of proof. R. 940).

[6a] Hereinafter referred to as HOLC.

All of the foregoing facts were known to petitioners and their members, and entered into and were parts of the controversy over employment existing between GHA, petitioners, their members and the hospitals.

Although many doctors who were not members of the petitioners were available to GHA, that corporation, despite full knowledge of the principles of ethics and rules and regulations governing the professional activities of petitioners' members, willfully sought to induce certain doctors who were members of petitioners, to ignore and violate their medical society obligations and accept employment on the GHA hired staff.

Apprehensive of impending controversy, members of DMS immediately sought both by individual and group conferences (R. 290-309, 176-199) to persuade GHA, in its employment of doctors who were medical society members, to make some effort to conform to the principles of ethics, and the employment rules and regulations of DMS (R. 160, 174). These overtures were flatly rejected by GHA (R. 201) and it persisted in endeavoring to proselyte petitioners' members, to induce them to ignore medical association rules, and to create controversies between such members and petitioners. The controversy here involved followed. To acquaint its members with the facts, the AMA published in its Journal an article that was critical of GHA (R. 368-386). GHA employed two doctors who were members of DMS (R. 197). DMS had a provision in its constitution that any of its members accepting contracts of employment must submit such contracts for approval to a committee of DMS (R. 1265, 1266). The two doctors hired by GHA, under the urging of GHA, refused to do so (R. 197), and after a full hearing (R. 165, 197), one of them was expelled from DMS (R. 561).

The Government contended that petitioners intended to restrain GHA and its employee-doctors and members. Petitioners assert that they intended only to preserve, protect, and defend their medical societies, their principles of ethics, rules and regulations, from impairment and destruction, and to perpetuate free and fair competition between their members as required by their principles of ethics (R. 860).

Petitioners were also charged with restraining the Washington hospitals. In 1934, AMA adopted the Mundt Resolution [7] (R. 779) which was thereafter transmitted to intern and resident hospitals. Several of the local hospitals already had such a rule (R. 638, 639, 1338). No hospital was ever required as a condition of approval, to confine its staff to society members (R. 1336, 1337). An inspection of local hospitals, had in the summer of 1937, far from being a part of an aim to restrain GHA, was, under the uncontradicted evidence, solicited by the hospitals (R. 781, 782, 869) and carried out on behalf of AMA by persons who had no knowledge (R. 785, 787, 870, 881) of the existence of GHA.

Obviously, membership in the medical societies aided and advanced the general professional welfare of members, and, as conceded in the indictment, became of importance and value to conforming members. GHA, while insisting upon the right of its employed doctors to retain medical society membership, nevertheless proposed that observance of medical society codes, rules and regulations could be ignored, at the will of a particular member, without loss of society membership and that any attempt on the part

[7] Resolved that it is the opinion of the House of Delegates of the American Medical Association that physicians on the staffs of hospitals approved for intern training by the Council on Medical Education and Hospitals be limited to members in good standing of their local county medical societies and that the House of Delegates requests the Council on Medical Education and Hospitals to take this under advisement.

of the society to require conformance with such rules operated as an illegal restraint of the medical society member as well as of his employer, GHA and its lay members.

The controversy threatened the continued welfare and existence of petitioners and made everything relating to GHA's terms and conditions of employing petitioners' members, of interest to petitioners, particularly insofar as petitioners' codes, rules and regulations might be violated. If GHA was operating in violation of Federal statutes and its activities presented an illegal, unethical, or unprofessional operation, if it was engaged in questionable practices inimicable to the best interests of either the public, the medical profession, the petitioners or their members, then petitioners owed its members, to say nothing of the public, the duty of opposing, avoiding and preventing injury to petitioners, and their members, through the proselyting tactics of GHA. The court below said physicians may organize, establish standards of professional conduct and effect agreements for self-discipline and control, but in the same breath said that if such standards and agreements are enforced and some other professional or business group is injured the Sherman Act is violated.

As the hospitals might well be considered the workshop of physicians, legitimate persuasion and reasoned argument might lawfully be directed toward the hospitals, recommending preference to organization members whose codes, rules and regulations were known and established, as against others not so well recommended. That could not possibly amount to criminal restraint of GHA under the Sherman Act. The court below said petitioners might use legitimate persuasion and reasoned argument as a means of winning public sentiment to their point of view but in the same breath said that when they so persuade and

argue with the hospitals or when petitioners' members persuade and argue among themselves, they violate the Sherman Act.

Out of this controversy came the indictment wherein 21 doctors and four medical associations were indicted (R. 1-21). A demurrer to the indictment (R. 21-24), particularly upon the ground of inapplicability of the Sherman Act, was sustained by the District Court (R. 24, 25). The Court of Appeals reversed, holding that the Act was a broad remedial statute, intended to protect all individuals in all occupations, professional or commercial, and any restraint upon an individual is prohibited by the Act. The opinion did not even contend the indictment charged that prices were fixed or that competition was suppressed to the extent that market prices were substantially affected. The case thereafter was tried upon the law laid down by the Court of Appeals. Upon the trial, two individual defendants and two defendant associations were discharged by directed verdict (R. 38). At the close of all the evidence, motions to direct verdicts for *each* defendant as to the charge of restraint of *each* of the five activities described in the indictment, were made and denied (R. 1453-1455) and defendants excepted. The court instructed the jury that defendants could be convicted if a conspiracy did in fact exist to restrain trade in the District in at least one of the several ways alleged (R. 1508) i. e., any one of the five activities alleged in the indictment to have been restrained. Of the remaining defendants, all the individual defendants were acquitted, and only the corporate petitioners were convicted. After verdict petitioners moved the court to disregard all the evidence pertaining to the acts and doings of the individual defendants found "not guilty" and to enter a judgment for the corporate petitioners notwithstanding the verdict (R. 1517), and also

moved the court in arrest of judgment (R. 1518) and for a new trial (R. 1519). These motions were denied (R. 1525), judgments were entered on the verdict (R. 1525, 1526), and fines imposed (R. 1525, 1526). On appeal the Court of Appeals affirmed. This Court granted certiorari limiting the writs to the "questions presented" herein.

The evidence is voluminous, but on the questions presented here certain statements of ultimate fact can fairly be made.

1. The evidence showed that the activities claimed to have been restrained were the practice of medicine and the rendering of medical services.

2. The evidence which the Government contends showed that petitioners conspired to "restrain" trade was as follows:[8]

Evidence that petitioners thought that the plan of GHA was in violation of law and of the Principles of Medical Ethics of AMA and DMS and therefore "unlawful" and "unethical."

Evidence which the Government says tended to show that petitioners were opposed to GHA and that such opposition was inspired by a fear that GHA would attract a substantial number of Government employees who were actual or potential patients of petitioners' members with a resulting reduction in the income of petitioners' members.

Evidence which the Government says shows a plan to force GHA out of business. The Government says the plan consisted of:

> (a) Action by DMS forbidding its members to join the medical staff of GHA or to consult with members of the staff. (It is important to observe that DMS, long before the incorporation of GHA, had a provi-

[8] This is taken from the brief of the United States, pp. 8-15, in opposition to the granting of certiorari herein.

sion in its Constitution that required its members to submit for approval any contract which they might contemplate entering into, for the rendering of medical services, other than the usual patient and doctor relationship) (R. 1265, 1266).

(b) The institution by a committee of DMS, before the Executive Committee of DMS, of disciplinary proceedings, against two members of DMS who violated the provisions of the DMS Constitution. (The two members of DMS, at the instigation of GHA, declined to submit to DMS, for approval their contract of employment by GHA. DMS had no alternative but to institute such disciplinary proceedings unless they were to abandon their Constitution.)

(c) The coercion of the Washington hospitals to exclude GHA doctors from the staffs of the hospitals and thus to prevent these doctors from treating their GHA patients in the hospitals. (This contention is based on the resolution of December 1, 1937, of DMS [9] which was sent to the hospitals.)

3. The evidence showed a dispute was involved between petitioners and GHA, its officers, agents and doctors, concerning terms and conditions of employment of doctors by GHA.

SPECIFICATION OF ERRORS TO BE URGED.

The court below erred: (1) In reversing the judgment of the District Court sustaining petitioners' demurrer to the indictment; (2) In holding the indictment charged a

[9] Resolved, that as a matter of educational policy the Medical Society of the District of Columbia strongly recommends that all hospitals engaged in the teaching and training of residents, interns, and nurses, where possible, follow the recommendations of the American Medical Association regarding the constitution of their entire medical staffs, namely, that each appointee be a member of the Medical Society of the District of Columbia or a local Medical Society in his immediate neighborhood and a member of the American Medical Association.

violation of Sec. 3 of the Sherman Act; (3) In holding the indictment was not insufficient; (4) In affirming (on the second appeal) petitioners' convictions; (5) In construing Sec. 3 of the Sherman Act as applying to and forbidding the acticities charged in the indictment or proven in the evidence; (6) In construing the Clayton and Norris-La Guardia Acts as not applying to the activities charged in the indictment or proven in the evidence; (7) In affirming the following: (a) the denial of petitioners' several motions for a directed verdict at the close of all the evidence; (b) the giving of respondent's instructions to the jury; (c) the refusal of or modification of petitioners' requested instructions; (d) the charge to the jury; (e) the denial of petitioners' motion to set aside the verdict and to enter judgment for the petitioners; (f) the denial of petitioners' motion in arrest of judgment; (g) the denial of petitioners' motion for a new trial; and (h) the entry of judgments on the verdict and the assessment of fines against petitioners.

ARGUMENT

I.

The Word "Trade" in Sec. 3 of the Sherman Act Does Not Include the Practice of Medicine and the Rendering of Medical Services as Described in the Indictment, Because They Are Not "Commercial" in Nature.

What is the meaning of the word "trade" in Sec. 3 of the Sherman Act? The meaning of the words or phrases or language generally of a statute may be determined by consideration of:

(1) The natural meaning of the words or phrases used, both singly and in combination;

(2) The meaning which the courts have given to the words or phrases used;

(3) The legislative history of the statute;

(a) As to the evils the legislators were considering and attempting to reach and prevent;

(b) As to the field intended to be covered by the statute.

1. THE NATURAL MEANING OF THE WORD "TRADE" EXCLUDES THE PROFESSIONS.

What is the natural and ordinary meaning of the word "trade"? All of the dictionaries agree that in the broadest meaning ever ascribed to "trade" to date it has never been understood to include the arts or the learned professions. Professors, students and ordinary laymen in the United States would not understand the word "trade" to include the learned professions. Hence if the meaning of the word "trade" in the Act includes the learned professions it is for some reason other than the natural meaning of the word.

2. JUDICIAL DEFINITIONS OF THE WORD "TRADE" EXCLUDE THE PROFESSIONS.

As to the meaning which the courts have given to the word "trade" we submit that beginning in 1829 and continuing to date, except for the decisions of the court below in this case, it has been consistently held, both in the federal and state courts, that the word "trade" did not include the learned professions. Three of these cases were decisions of this Court under the Sherman Act, one a decision of this Court under the Federal Trade Commission Act, two state court decisions construing the Sherman Act, and numerous decisions of this Court, of United States Courts of Appeal and of state courts construing the word "trade" under various federal and state statutes. We propose to

discuss first the decisions of this Court under the Sherman Act and Federal Trade Commission Act in chronological order, then the decisions of the state courts that pertain to the Sherman Act, and then the other decisions of this Court, the federal courts and the state courts pertaining to the meaning of the word "trade."

Federal Club v. *National League* (1922) 259 U. S. 200, was decided on a writ of error to the Supreme Court of the District of Columbia. This Court held, Holmes, J., that the business of playing professional baseball was not "trade or commerce" within the meaning of Sec. 1 of the Sherman Act. The language of the opinion is just as applicable to Sec. 3 as it is to Sec. 1, because this Court said (p. 209):

> "The exhibition (playing baseball), although made for money would not be called trade or commerce in the commonly accepted use of those words. * * * personal effort, not related to production, is not a subject of commerce. That which in its consummation is not commerce does not become commerce among the States because the transportion that we have mentioned takes place. * * * a firm of *lawyers* sending out a member to argue a case, * * * does not engage in such commerce because the lawyer * * * goes to another State." (Italics supplied.)

In the foregoing the thought is clear and the meaning plain that personal effort not related to production is not trade or commerce in the District of Columbia and also that the *practice of law* is not trade or commerce in the District of Columbia, because this Court held (p. 209):

> "That which *in its consummation* is not commerce does not become commerce among the States because the transportation that we have mentioned takes place." (Italics supplied.)

In *Federal Trade Commission* v. *Raladam Co.*, (1931) 283 U. S. 643, the Federal Trade Commission issued a

complaint charging the respondent with using unfair methods of competition in interstate commerce. It was charged that the respondent manufactures, advertises, and sells a preparation for internal use denominated an "obesity cure." The complaint alleged that the acts and practices of the Raladam Company are all to the prejudice of the public and of competitiors of respondent and constitute unfair methods of competition. The Commission issued a cease and desist order. The Court of Appeals reversed the order. This Court affirmed the decision of the Court of Appeals. It was contended that the business injured by the advertising and other activities of the Raladam Company was the business of doctors, because they prescribed for obesity. The question was presented whether the activities of Raladam Company were unfair competition to doctors. This Court held that the Federal Trade Act and the Sherman Act concern the same subject matter and then ruled squarely that doctors were not in competition with the Raladam Company because "they follow a profession and not a trade" and there being no evidence in the record that Raladam Company had any competitors, there was no evidence of unfair competition and no violation of the Act. If the practice of medicine be "trade" under the Federal Trade Commission or Sherman Acts, then the Raladam Company would have had competitors and a different result might have been reached in the *Raladam* case.

In *Atlantic Cleaners & Dyers* v. *United States* (1932) 286 U. S. 427, the question before this Court was whether the business of cleaning and dyeing clothes in the District of Columbia was "trade" within the meaning of Sec. 3 of the Sherman Act. The case was decided on the pleadings, and it was held that such business was "trade." That decision was in accord with the doctrine laid down in *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, because there

is little doubt that the business of cleaning and dyeing clothes is a "commercial" and "business" activity. While it is true that members of the learned professions were not parties to the case, nevertheless the issue before this Court called for a definition of "trade" within the meaning of Sec. 3 of the Sherman Act, and this Court in giving that definition necessarily stated what was excluded from as well as what was included in, the definition of the word "trade" and held that the professions were not within Sec. 3.

The opinion in the *Atlantic Cleaners & Dyers* case made certain statements with reference to the fact that Sec. 1 of the Sherman Act pertained to interstate commerce, and Sec. 3, *in part*, pertained to commerce within the District of Columbia. This Court recognized that Sec. 3 is not confined to commerce within the District but by its specific terms covers interstate commerce into and out of the District. The opinion, properly analyzed, said that the word "trade" had a broad and a narrow meaning, and under the rules of statutory construction the Court was at liberty to give the word the broader meaning. This Court then held that even under the broader meaning, the liberal arts and the learned professions were not included within the meaning of the word "trade," but that the word did include local "commercial" and "business" activities.

This Court then adopted the following definition of "trade" given by Mr. Justice Story (p. 436):

> "Whenever any occupation, employment, or business is carried on for the purpose of profit, or gain, or a livelihood, not in the liberal arts or in the learned professions, it is constantly called a *trade*."

This Court then said (p. 437):

> "We think the word 'trade' was used in Sec. 3 of the Sherman Act in the general sense attributed to it by

> Justice Story, and at least, is broad enough to include the acts of which the Government complains."

Any ambiguity in that opinion was cleared up by *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, wherein this Court held, with reference to both Secs. 1 and 3, as follows (p. 495):

> "It was in this sense of preventing restraints on *commercial competition* that Congress exercised 'all the power it possessed.' *Atlantic Cleaners & Dyers v. United States*, supra, 435." (Italics supplied.)

Apex Hosiery Co. v. *Leader*, *supra*, held in substance and effect that no activity could be in "trade" within the meaning of either Secs. 1 or 3 of the Sherman Act unless it was a "commercial" activity. It is clear from the *Apex* case that this Court was of the opinion that Congress in enacting Sec. 3 of the Sherman Act intended that the word "trade" therein should have the same meaning as in Sec. 1 thereof, except that the trade and commerce within the district did not have to be interstate trade and commerce.

In *United States* v. *American Medical Ass'n*, 72 App. D. C. 12, 110 F. 2d 703, hereinafter called the first *American Medical Ass'n* case, the Government contended and the court below agreed that the Sherman Act was a broad, remedial statute covering all activities of every individual. In that case the court said (p. 711), "the common law governing restraints of trade has not been confined, as defendants insist, to the field of commercial activity ordinarily defined as 'trade,' but embraces as well the field of the medical profession." The subsequent opinion in the *Apex* case overruled that proposition of law. The United States in its brief filed in *United States* v. *Hutcheson*, 312 U. S. 219, 222, conceded to this Court that "The test laid down in that case (*Apex Hosiery Co.* v. *Leader*) is whether the restraint is upon *commercial competition* * * *."

In the first *American Medical Ass'n* case, relying on *Atlantic Cleaners & Dyers* v. *United States*, 286 U. S. 427, the court held that Congress had exercised its full power in enacting Sec. 3 and that, therefore, Sec. 3 was broader than Sec. 1, and that the word "trade" in Sec. 3 was intended (p. 710) "to cover all occupations in which men are engaged for a livelihood." The court below did not correctly analyze the opinion in the *Atlantic Cleaners & Dyers* case. The *Apex* case correctly analyzed that opinion and said that Congress exercised its full power in a more limited sense in enacting both Secs. 1 and 3, and held (p. 495):

> "Because many forms of restraint upon *commercial* competition extended across state lines so as to make regulation by state action difficult or impossible, Congress enacted the Sherman Act. 21 Cong. Rec. 2456. It was in this sense of preventing restraints on *commercial* competition that Congress exercised 'all the power it possessed.' *Atlantic Cleaners & Dyers* v. *United States*, supra, 435." (Italics supplied.)

We understand from the *Apex* case that, in enacting Secs. 1 and 3, Congress exercised all the power it possessed in the District of Columbia and elsewhere *only* (p. 495) "in this sense of preventing restraints on *commercial* competition." (Italics supplied.)

In the first *American Medical Ass'n* case the court held (p. 712) every person individually has the right under the Sherman Act to be free in his trade, business or profession, and held (p. 712) that the talents of any and every person are "trade" under Sec. 3 of the Sherman Act, but the *Apex* case held that the word "trade" in the Sherman Act applies only to *commercial* transactions.

In the *Apex* case this Court reviewed the legislative history of the Sherman Act, repudiated the theory of the first *American Medical Ass'n* case that the Sherman Act covers

every individual in the employment of his skill or capital and held (p. 490) the act was not a "policing" act and said (pp. 491-492):

> "It was another and quite a different evil at which the Sherman Act was aimed. It was enacted in the era of 'trusts' and of 'combinations' of businesses and of capital, organized and directed to control of the market by suppression of competition in the marketing of goods and services, the monopolistic tendency of which had become a matter of public concern. The end sought was the prevention of restraints to free competition in *business and commercial transactions* . . . ." (Italics supplied.)

In footnote 15 (p. 493) this Court said:

> "The history of the Sherman Act as contained in the legislative proceedings is emphatic in its support for the conclusion that '*business* competition' was the problem considered and that the act was designed to prevent restraints of trade which had a significant effect on *such* competition." (Italics supplied.)

The legislative history, of which this Court spoke applied to Sec. 3 as well as Sec. 1. Those sections had no separate legislative history. The *Apex* case, we submit, overruled the holding in the first *American Medical Ass'n* case that Sec. 3 is not confined to "business and commercial" transactions.

The meaning to be given the word "trade" as used in the Act and the "full power" exercised in enacting Secs. 1 and 3 of the Act are construed by this Court as follows (pp. 494-497):

> "For that reason the phrase 'restraint of trade' which, as will presently appear, had a well-understood meaning at common law, was made the means of defining the activities prohibited. The addition of the words 'or commerce among the several states' was not

an additional kind of restraint to be prohibited by the Sherman Act but was *the means used to relate the prohibited restraint of trade to interstate commerce* for constitutional purposes, *Atlantic Cleaners & Dyers v. United States*, 286 U. S. 427, 434, so that Congress, through its commerce power, might suppress and penalize restraints on the competitive system which involved or affected interstate *commerce*. Because many forms of restraint upon *commercial competition* extended across state lines so as to make regulation by state action difficult or impossible, Congress enacted the Sherman Act, 21 Cong. Rec. 2456. It was in this sense of preventing restraints on *commercial competition* that Congress exercised 'all the power it possessed.' *Atlantic Cleaners & Dyers v. United States*, supra, 435.' (Italics supplied.)

"A second significant circumstance is that this Court has never applied the Sherman Act in *any case, whether or not involving labor organizations or activities*, unless the Court was of opinion that there was some form of restraint upon *commercial competition* in the marketing of goods or services and finally this court has refused to apply the Sherman Act in cases like the present in which local strikes *conducted by illegal means* in a production industry prevented interstate shipment of *substantial amounts of the product* but in which it was *not* shown that the restrictions on shipments had operated to *restrain commercial competition in some substantial way*." (Italics supplied.)

This Court clearly pointed out that the common law doctrine of restraints of trade was well understood long before the enactment of the Sherman Law, and was taken over into the law and applied to "*commercial competition*" *only* when their purpose or effect was (p. 500, 501) "to the prejudice of the public interests by unduly restricting competition or unduly obstructing the due course of trade • • • or injuriously restrained trade."

Thus the *Apex* case differs with the holding in the first *American Medical Ass'n* case that the Sherman Act is a "chart" covering all activities of the citizen, whether commercial or not, and the public injury is measured by the injury to the individual. As the *Apex* case points out, that is erroneous, as the Sherman Act is not a policing statute, is not predicated upon individual injury, and is limited to *commercial* activities.

Respondent in its brief filed in the Court of Appeals in the first *American Medical Ass'n* case (p. 24), conceded, with reference to the charge in the indictment, that "these restraints are not upon commercial and industrial activities, but upon the marketing of a professional service."

In the first *American Medical Ass'n* case it was held (p. 714) that the actions of GHA in no way tend to commercialize the practice of medicine and that (p. 714) "the practice of medicine in the District of Columbia is subject to licensing and regulation and we think may not be lawfully subjected 'to commercialization or exploitation'."

American Medical Ass'n v. *United States* — App. D. C. —, 130 F. 2d 233, hereinafter called the second *American Medical Ass'n* case, was decided after the *Apex* case. In the second *American Medical Ass'n* case the court erroneously said (p. 235): "the practice of medicine was recognized by the English cases as constituting trade." and that a restraint on the practice of medicine may constitute a restraint of trade.[10] In direct contradiction of that holding,

[10] Those cases do not hold the practice of medicine to be trade, and that specific issue was not raised or decided in those cases. The English cases dealt with the validity of ancillary covenants incident to the sales of professional practices. While a few of those cases, in determining the validity of covenants not to practice medicine in a given locality or during a given time, apply the rule announced in "restraint of trade" cases, "restraint of trade" was not the basis for decision and the overwhelming majority of those cases are based upon principles of public policy, the law of contracts or local statutes and do not even mention "restraint of

later in the same opinion, the court below held (p. 237) that the activities of GHA's doctors were not commercialized and, as we understand the opinion, not "trade". Notwithstanding the court below held the activities of GHA's doctors were not commercialized it held that the activities of GHA were commercial. The sole activity of GHA is the rendering or providing of medical services to its members, and we are unable to understand the reasoning of the Court of Appeals in holding the activities of GHA to be commercial and the activities of its doctors, not commercialized. In making that, to us, impossible distinction the court did not appear to consider that GHA was organized under the District of Columbia Code (1940) Title 29, Secs. 29-601 to 29-605, which provides for the incorporation of charitable, educational, and religious associations. We submit that the activities of a corporation so organized could hardly be "commercial".

The court said (p. 236) the trade or commerce involved was of three kinds; "(1) the making available and financing of medical and hospital services; (2) medical service itself, i.e., service rendered by medical doctors; (3) hospital services, i.e., service rendered by hospital staffs and the use of hospital facilities."

We insist that such activities are but the practice of medicine and the rendering of medical services and that such activities are not "commercial", and hence not "trade".

Other decisions construing the Sherman Act also support our contention that the word "trade" does not include the professions.

In *Metropolitan Opera Co.* v. *Hammerstein* (1924, N. Y.) 162 App. Div. 691, it was held that the production of grand

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trade." The *Apex* case considered the English cases and concluded that only "commercial" activities are within the meaning of the word "trade" as used in the Sherman Act.

opera was not within the meaning of the word "trade" as used in the Sherman Act. It would seem that the court was also of the opinion that the practice of medicine or law were likewise not within the meaning of the word "trade" in the Sherman Act because it said, (p. 695): "If the production of opera is trade or commerce, it would seem to follow that every museum which exhibits pictures, every university which gives courses of instruction or lectures, every *lawyer* who prepares a brief, every *surgeon* who performs an operation * * * is engaged in commerce." (Italics supplied). That opinion was affirmed by the Court of Appeals (Cardozo, J., concurring) 221 N. Y. 507, 116 N. E. 1061.

In *Werth* v. *Fire Companies' Adj. Bureau* (1933) 160 Va. 845, 171 S. E. 255, the court in construing a state anti-trust law and the phrase "trade and commerce" as used in the Sherman Act held, under that state act and the Sherman Act, that insurance with its attendant and incident activities is not comprehended within the term "commerce" or its synonym "trade."

We turn now to the consideration of the cases from 1829 to date which have held, though not under the Sherman Act, that the practice of the learned professions is not trade or commerce.

In *Dandridge* v. *Washington*, (1829) 27 U. S. 369, on an appeal from the Circuit Court of the District of Columbia, in an opinion by Marshall, C. J., in defining "trade," this Court said (p. 377):

> "The distinction between a profession and a trade is well understood; and they are seldom, if ever, confounded with each other, in ordinary language. If the testatrix had contemplated what, in the common intercourse of society, is denominated a profession, she would scarcely have used a term which is generally received as denoting one of the mechanical arts."

So, at the time of the passage of the Sherman Act it was settled law in the District of Columbia, certainly since 1829, that the word "trade" in its ordinary meaning did not include the professions, and that is presumed to have been known to Congress.

In *The Schooner Nymph*, (1834) 18 Fed. Cas. 506, No. 10388, 1 Sumn. 516 (C. C., D. Maine) in construing a Coasting and Fishery Act, which declared that any licensed ship, employed in any other "trade" than that for which it was licensed, should be forfeited, Mr. Justice Story said (517, 518):

> "Wherever any occupation, employment, or business is carried on for the purpose of profit, or gain, or a livelihood, not in the liberal arts or in the learned professions, it is constantly called a *trade*."

The *Nymph* case was decided prior to the enactment of the Sherman Act, and Congress would be presumed to know that it had been decided in the federal courts that the word "trade" did not include the liberal arts or the learned professions.

In *May* v. *Sloan*, (1879) 101 U. S. 231, this Court held (p. 237):

> "The word 'trade,' in its broadest signification, includes not only the business of exchanging commodities by barter, but the business of buying and selling for money, or commerce and traffic generally."

Thus this Court defined "trade" in what was said to be its *broadest* signification, and, yet, did not extend the meaning beyond the business of buying and selling for money, or commerce and traffic generally. This definition of "trade" is presumed to have been known to Congress when it enacted the Sherman Act.[11]

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[11] The Sherman Act became law on July 2, 1890. Sec. 6 of the Clayton Act was enacted October 15, 1914 (38 Stat. 731) 15 U. S. C. Sec. 17. The first sentence thereof provided, "The labor of a human being is not a commodity or article of commerce."

Graves v. *Minnesota* (1926) 272 U. S. 425, involved a prosecution for violating a statute of Minnesota by practicing dentistry without a license. The specific contention of the defendant was that the requirement of the statute that an applicant for a license must present a diploma from an approved dental college before he can be examined by the board was unreasonable, arbitrary, and discriminatory and violates the Federal Constitution. The defendant relied on decisions which struck down similar statutes, placing like requirements on the employments or trades of locomotive engineers and barbers. This Court held the dental statute in question did not violate the Federal Constitution and said that statutes pertaining to employments or trades of locomotive engineers and barbers manifestly involved very different considerations from those relating to such professions as dentistry, requiring a high degree of scientific learning.

If this Court in the *Graves* case thought the practice of medicine or dentistry was trade, and on a par with other trades, which follows from the decisions in the court below, then the *Graves* case might have been decided differently, and the statute in question there held unconstitutional under the "trade" cases cited by Graves.

Semler v. *Dental Examiners*, (1935) 294 U. S. 608, involved the validity of an Oregon statute relating to dentists, providing for the revocation of licenses for unprofessional conduct, including advertising. Plaintiff brought suit to enjoin the enforcement of the statute alleging that it violated the Federal Constitution. A demurrer was sustained to the complaint, and the suit was dismissed by the trial court. The supreme court of the state affirmed. The complaint alleged that complainant had habitually advertised and that his advertisements were truthful and that he had made contracts for display signs and for advertising in newspapers and had entered into other engage-

ments of which he would be unable to take advantage if the legislation was sustained, and that in that event his business would be destroyed or materially impaired. This Court held that the state could deal with the different professions according to the needs of the public in relation to each, and that the legislation in question did not violate the Federal Constitution. This Court said (p. 612):

> "The legislature was not dealing with traders in commodities, but with the vital interest of public health, and with a profession treating bodily ills and demanding different standards of conduct from those which are traditional in the competition of the marketplace. The community is concerned with the maintenance of professional standards which will insure not only competency in individual practitioners, but protection against those who would prey upon a public peculiarly susceptible to imposition through alluring promises of physical relief. And the community is concerned in providing safeguards not only against deception, but against practices which would tend to demoralize the profession by forcing its members into an unseemly rivalry which would enlarge the opportunities of the least scrupulous. What is generally called the 'ethics' of the profession is but the consensus of expert opinion as to the necessity of such standards."

While the construction of Sec. 3 of the Sherman Act was not involved yet the *Semler* case clearly held that the members of a profession, such as dentists or doctors, are not engaged in the competition of the market place and if that be true then under the *Apex* case they would not be in "trade" within Sec. 3 of the Sherman Act.

If the practice of medicine be "trade" and on a par with other trades, then the *Semler* case might have been decided differently and the statute in question held unconstitutional. If the professions be "trade," then all

statutes pertaining to the professions are subject to attack on constitutional grounds.

The court below asserted in the second *American Medical Ass'n* case (p. 245) that the *Graves* and *Semler* cases were not in point because they pertained to the police power of the states. Such an assertion is beside the point. Those cases were definite holdings by this Court that the word "trade" does not include the learned professions. They also serve to point out the chaos that will be created in the law of the various states, if the word "trade" in the Sherman Act is held to include the learned professions.

In re United States Hotel Co., (1904), 134 Fed. 225 and *Toxaway Hotel Co.* v. *Smathers*, (1910) 216 U. S. 439, it was held that the operations of hotels and the incidental activities connected therewith were not "trade" within the meaning of the Bankruptcy Act.

In *Jeu Jo Wan* v. *Nagle*, (1925) 9 F. 2d 309, it was held (p. 310) even under a treaty of commerce, which would involve the broadest construction of the word "trade," that:

> "The word 'trade,' in its *broadest* signification, * * * is not broad enough to include a mere teacher, especially when the term 'trade' is used in connection with commerce * * *." (Italics supplied.)

The following state decisions hold that the word "trade" does not include the learned professions: *Yocum* v. *Feld*, 129 Fla. 764, 176 So. 753 (doctor); *Slocum* v. *City of Fredonia*, 134 Kans. 853, 8 P. 2d 332 (doctor); *Whitcomb* v. *Reid*, 31 Miss. 567, 569 (dentistry); *People* v. *Kelly*, 255 N. Y. 396, 175 N. E. 108 (music teaching); *Iselin* v. *Flynn*, 154 N. Y. S. 133 (doctor).

There is, therefore, no judicial authority for defining "trade" as including activities in the professions. There

remains for attention the legislative history of the Sherman Act.

3. THE LEGISLATIVE HISTORY OF THE SHERMAN ACT REQUIRES A DEFINITION OF "TRADE" THAT EXCLUDES THE PROFESSIONS.

As to the legislative history of the Sherman Act pertaining to the meaning of the word "trade" therein, this Court in the *Apex* case exhaustively commented on the evils the legislators were considering and attempting to reach and prevent, and also the field the legislators intended to cover by the Act.

This Court held (p. 490):

> "The legislative history of the Sherman Act as well as the decisions of this Court interpreting it, show that it was not aimed at *policing* interstate transportation or movement of goods and property. The legislative history and the voluminous literature which was generated in the course of the enactment and during fifty years of litigation of the Sherman Act *give no hint* that such was its purpose." (Italics supplied.)

This Court continued (p. 491-492):

> "It was another and quite a different evil at which the Sherman Act was aimed. It was enacted in the era of 'trusts' and of 'combinations' of businesses and of capital organized and directed to control of the market by suppression of competition in the marketing of goods and services, the monopolistic tendency of which had become a matter of public concern. The *end* sought was the prevention of restraints to free competition in *business and commercial transactions* * * *." (Italics supplied.)

In footnote 15 (p. 493) this Court said:

> "The history of the Sherman Act as contained in the legislative proceedings is emphatic in its support for the conclusion that '*business competition*' was the

problem considered and that the Act was designed to prevent *restraints of trade* which had a significant effect on *such* competition." (Italics supplied.)

In view of the foregoing language of this Court it is idle to contend that Congress intended to include non-commercial activities within the meaning of the word "trade" as used in the Sherman Act.

Thus whether we turn to the natural meaning of the word "trade," or the judicial definitions of the word "trade" or the legislative history of the Sherman Act we reach the inescapable conclusion that the word "trade" in Sec. 3 of the Sherman Act concerns only "commercial" activities and excludes the learned professions.

NONE OF THE FIVE ACTIVITIES ALLEGED TO HAVE BEEN RESTRAINED WERE "TRADE" UNDER THE SHERMAN ACT.

Let us consider the five activities alleged to have been restrained and see if they or any of them are "trade" under the Sherman Act.

1. Is GHA a "commercial" or "business" activity? It was organized under the District of Columbia Code (1940) Title 29, Secs. 29-601 to 29-605, which provides for the incorporation of charitable, educational, and religious associations. Its sole activities are to collect dues from its members, pay rent for and maintain a suite of doctors' offices, with the usual appurtenances thereto, employ doctors to render medical services, within limits, to its members and to pay, within limits, the hospital bills of its members. We insist that such activities are not "commercial" or "business" activities.

2. Are the members of GHA engaged in a "commercial" or "business" activity? We think even the Government has abandoned any contention that the Government em-

ployees are engaged in a "commercial" or "business" activity.

3. Is the activity of the doctors employed by GHA a "commercial" or "business" activity? In the second *American Medical Ass'n* case the court said that activities of the doctors employed by GHA are not commercialized, and we understand therefore, not engaged in a "commercial" or "business" activity.

4. Is the practice of medicine by the medical profession generally a "commercial" or "business" activity? It would seem to follow as a matter of course, if the GHA doctors are not engaged in a "commercial" or "business" activity, that doctors generally are not.

5. Are the Washington hospitals, or that part of their activities here involved, "commercial" or "business" activities? We insist that the activities of the Washington hospitals here involved are not "commercial" or "business" activities. In the second *American Medical Ass'n* case the court concedes (p. 238) that there is authority for the proposition that private hospitals supported by appropriations and charity are not engaged in trade, business, or industry,[12] but concludes, without any support in the evidence, that it has no doubt that the hospitals described in the indictment were engaged in trade within the meaning of the Sherman Act, citing *Jordan* v. *Tashiro*, 278 U. S. 123, 127-129. In the *Jordan* case the articles of incorporation provided for "a business corporation with a share capital of $100,000.00," and the facts there showed that such a "business" was within the provisions of the

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[12] *Western Pennsylvania Hospital* v. *Lichliter*, 340 Pa. 382, 387, 17 A. 2d 206, 209, 132 A. L. R. 1146; *City of Rochester* v. *Rochester Girls' Home*, 194 N. Y. S. 236, 237; *Easterbrook* v. *Hebrew Ladies' Orphan Society*, 85 Conn. 289, 298, 82 A. 561, 564; Note, 41 L. R. A., N. S. 615; *Lawrence* v. *Nissen*, 173 N. C. 359, 364, 91 S. E. 1036, 1038.

treaty involved. Such proof as there was in the record in this case tends to show that the Washington hospitals are non-profit institutions for the care of the sick, and their funds are used for that purpose (R. 591, 1338).

Moreover, under the evidence herein the only way the hospitals were involved in this case was in the matter of the appointment or refusal to appoint GHA doctors to the hospital staffs. Such appointment or non-appointment clearly does not pertain to a "commercial" or "business" activity. With reference to this point the District Court in its opinion in this case (28 F. Supp. 752, 757) very properly said:

> "Finally, when the indictment is carefully studied in all its parts, each in relation to the others, it is difficult to escape the conclusion that in its substantial realities the scheme set forth *directly* centered upon various forms of restraint to be exerted against physicians in rendering treatment and care to their patients, and that all else is *incidental* to that design. If restraint upon doctors was the only real direct and immediate effect, any indirect effects upon the Association (GHA) or hospitals would not suffice to support the charges as to them."

We think it is perfectly clear that under the indictment, and certainly from the evidence, the "trade" claimed to have been restrained was the practice of medicine and the rendering of medical services. The District court so held on demurrer to the indictment. The court below in its first and second opinions seems to hold under the indictment and the evidence that the alleged restraints concerned "medical care and hospitalization" and "medical services." We insist that medical care, medical services and hospitalization are all part and parcel of the practice of medicine. If any one of the five activities alleged to have been restrained is not "trade" under Sec. 3 of the Sherman

Act, then petitioners are entitled to a reversal of the judgments below. This is so because petitioners moved for a directed verdict as to *each* (R. 1454-1455) and all (R. 1454) of the five activities charged to have been restrained. The trial court denied those motions and over petitioners' objections and exceptions charged the jury that petitioners could be convicted if any one of those five activities was restrained. After verdict petitioners moved for judgment n.o.v. (R. 1517, 1518), for a new trial (R. 1519-1524) and in arrest of the judgments (R. 1518, 1519). If any one of the five activities was not "trade" under Sec. 3 of the Sherman Act, then no one is able to determine whether or not the jury returned its verdict based on a restraint of an activity that was not "trade" under Sec. 3 of the Sherman Act. *Stromberg* v. *California*, 283 U. S. 359, 367-370; *Thornhill* v. *Alabama*, 310 U. S. 88, 96; *Garland* v. *Davis*, 45 U. S. (4 How.) 131; *Baltimore and O. R. Co.* v. *Reeves*, 10 F. 2d 329,330, 331; *Patton* v. *Wells*, 121 F. 337, 340; *St. Louis, I. M. & S. Ry. Co.* v. *Needham*, 63 F. 107, 113, 114; *Mauderville* v. *Cookenderfer*, 3 Cranch, C. C. (3 D. C.) 257, Fed. Cas. No. 9,009. Furthermore, if any one of the five activities alleged to have been restrained was not "trade" under Sec. 3 of the Sherman Act the court erroneously charged the jury that restraint on any one of the five classes alleged to have been restrained was sufficient to convict (R. 1508). *Stromberg* v. *Californit, supra; Maryland* v. *Baldwin*, 112 U. S. 490, 493.

II.

The Word "Restraint" in Sec. 3 of the Sherman Act Does Not Include Any Restraint That Does Not Fix Prices or Suppress Competition to the Extent That Market Prices Are Substantially Affected to the Injury of the Public.

The question presented under this point is whether the indictment charged or the evidence proved "restraints" of trade under Sec. 3 of the Sherman Act.

What is the meaning of the word "restraint" in Sec. 3 of the Sherman Act?

Apex Hosiery Company v. *Leader*, 310 U. S. 469 is now the law on the meaning of the word "restraint" in the Sherman Act. Little, if anything, is to be gained by a consideration of previous cases on this point. The *Apex* case considered all the previous cases which the Court thought had any material bearing on the question and also considered the legislative history of the Act and whether the Sherman Act took over the entire doctrine of restraint of trade at common law[13] or only part thereof. The Court decided that the word "restraint" in the Sherman Act, both in Secs. 1 and 3, does not include any restraint that does not fix prices or suppress competition to the extent that market prices are substantially affected to the injury of the public. Whatever the previous interpretations of the Sherman Act may have been or whatever the common law doctrine of restraint of trade may have been, we must look to the *Apex* case to determine the law today. The first *American Medical Ass'n* case was decided before the decision in the *Apex* case. In that case the Court of Appeals said (page 711):

> "The charge, stated in condensed form, is that the medical societies combined and conspired to prevent the successful operation of Group Health's plan, and the steps by which this was to be effectuated were as follows:
>
> "(1) to impose restraints on physicians affiliated with Group Health by threat of expulsion or actual expulsion from the societies;

[13] This court made its holding on this important point emphatic, when it said (page 500) contracts, combinations or conspiracies are to be condemned under the Sherman Act "only when their purpose or effect was to raise or fix the market price. It is in this sense that the restraints, actual or intended, prohibited by the Sherman Act are only those which are so substantial as to affect market prices."

"(2) to deny them the essential professional contacts with other physicians, and

"(3) to use the coercive power of the societies to deprive them of hospital facilities for their patients."

The court said (p. 712), that the restraint charged would restrict the common liberties of Group Health, the doctors and the hospitals from engaging in the pursuit of their respective functions. As to the meaning of the word "restraint" in the act the court said (p. 713):

"It certainly cannot be doubted that Congress intended to exert its full power, in the public interest, to set free from unreasonable obstruction the exercise of those rights and privileges which are a part of our constitutional inheritance, and these include immunity from compulsory work at the will of another, the right to choose an occupation, the right to engage in any lawful calling for which one has the requisite capacity, skill, material, or capital, and thereafter the free enjoyment of the fruits of one's labors. Congress undoubtedly legislated on the common law principle that every person has individually, and that the public has collectively, a right to require the course of all legitimate occupations in the District of Columbia to be free from unreasonable obstructions; and likewise in recognition of the fact that all trades, businesses and professions, which prevent idleness and exercise men in labor and employment for the benefit of themselves and their families and for the increase of their substance, are desirable in the public good and any undue restraint upon them is wrong and is immediate and unreasonable and, therefore, within the purview of the Sherman Act."

It is thus clear that the court in the first *American Medical Ass'n* case held that the word "restraint" in Sec. 3 of the Sherman Act meant any restraint upon the freedom of

any individual in his pursuit of any lawful calling. It must be conceded by all that since the *Apex* case that is not the meaning of the word "restraint" in the Sherman Act.

On the trial of this case the judge applied the law as laid down in the Court of Appeals in its first opinion and which now clearly appears to have been erroneous.

In the second *American Medical Ass'n* case decided after the *Apex* case, the court below, in describing the intended restraints, departed from its opinion in the first *American Medical Ass'n* case and held (p. 238) that the indictment charges and the proof shows a suppression of competition in the matter of the activities of GHA and seems to hold that is sufficient to show a violation of the Sherman Act. The court says nothing as to whether the indictment charges or the proof shows that market prices of the activities of GHA were substantially affected to the injury of the public. The court seems to have overlooked that essential part of the definition of "restraint" as laid down in the *Apex* case.

The difficulty is that the indictment was drawn before the decision in the *Apex* case and did not charge a fixing of prices or a suppression of competition in the matter of the activities of GHA and did not charge that market prices for the activities of GHA were substantially affected to the injury of the public. It was based solely upon the theory of an injury to an individual or individuals. And, of course, there was no proof that meets the requirements of the *Apex* case.

In the case at bar, even if the indictment charged and the evidence showed (which is denied) acts that tended to restrain GHA, that fact alone would not spell out a violation of the Sherman Act, under the *Apex* case and the con-

curring opinion of Stone, C. J., in *United States* v. *Hutcheson*, 312 U. S. 219, 241, 242.[14]

The decisions below, holding that the indictment and the evidence show a violation of the Sherman Act, conflict with the *Apex* case, the cases following it [15] and two other Federal decisions.[16] Those cases all squarely hold only such restraints are within the act that restrain commercial activities, the effect of which is to affect the market, either by fixing prices or suppressing competition to the extent that market prices are substantially affected to the injury of the public. Those elements are neither pleaded nor proved in this record. There was not a scintilla of evidence to that effect.

In its brief in opposition to certiorari herein respondent attempted (p. 19) to inject "commercial competition" and "the market" into this case. The attempt comes a little late. No such elements were involved in either the indictment or the evidence. Those phrases are a belated attempt to bring this case within the law as declared in *Apex Hosiery Company* v. *Leader*, 310 U. S. 469. The indictment was drawn and the case was tried on an entirely different theory, i.e., that any restraint on any individual in earning a livelihood violates the Sherman Act. In fact, respondent conceded in its brief (p. 24) in the first *American Medical Ass'n* case that:

> "The present case, like other Sherman Act cases, has to do with restraints in a field of economic ac-

[14] In the *Hutcheson* case, respondent conceded to this Court that the "closing down of a factory" engaged in interstate business is not enough to show a violation of the Sherman Act, 312 U. S. 222.

[15] *International Lad's G. W. Union* v. *Donnelly G. Company*, 119 F. 2d 892, 898; *Gundersheimer's Inc.* v. *Baker, etc., I. Union*, 73 App. D. C. 352, 353, 119 F. 2d 205, 206; *United States* v. *Local 807 of I. Brotherhood, etc.*, 118 F. 2d 684-689, affirmed 315 U. S. 521; *International Ass'n. etc.* v. *Pauly Jail Bldg. Co.*, 118 F. 2d 615, 621; *United States* v. *Gold*, 115 F. 2d 236-238.

[16] *Konecky* v. *Jewish Press*, 288 F. 179; and *Swartz* v. *Forward Ass'n.*, 41 F. Supp. 294.

tivity. Broadly speaking, it *differs* from previous cases only in that some of *these restraints are, not upon commercial and industrial activities*, but upon the marketing of a *professional* service. On analysis it will be found that the case involves considerations of public interest and *individual* freedom that are common to all Sherman Act cases." (Italics supplied.)

Such a concession is fatal to this prosecution under the *Apex* case.

It is suggested in the second *American Medical Ass'n* case (p. 238) that if GHA was "injured" that fact deprived the public of the advantages of a free, competitive market, and is sufficient to show a violation of the Sherman Act. The opinion intimates that the *Apex* case so held. The *Apex* case did not so hold. In the *Apex* case the strikers took the Apex Company completely out of the market.

This Court said in the *Apex* case (p. 490) three circumstances were of significance in interpreting the Sherman Act: 1 (p. 490) the legislative history; (2) (p. 495) that this Court has never applied the Act in any case unless it was of opinion that there was some form of restraint upon commercial competition; 3 (p. 497) the common law doctrines relating to restraint of trade.

In discussing the first circumstance that must be taken into account, i.e., the legislative history of the Sherman Act, this Court held (p. 490-495) that history disclosed that the Sherman Act was enacted to prevent restraints on "commercial" or "business" activities which had been exercised or used in such a way as to affect the market either by fixing prices or suppressing competition in the market to the extent that market prices are affected (p. 500), to the injury of the public.

In discussing the second circumstance (pp. 495-497) that must be taken into account, i. e., previous opinions of this Court, this Court stated that the Sherman Act had never

been applied in any case unless it involved commercial competition in the market.

In discussing the third circumstance (p. 497) this Court referred to the common-law doctrine of restraint of trade, which this Court described as:

> "• • • contracts for the restriction or suppression of *competition in the market*, agreements to *fix prices*, divide *marketing* territories, apportion customers, restrict *production* and the *like* practices, which tend to *raise prices* or otherwise take from buyers or consumers the advantages which accrue to them from free competition in the market."[17] (Italics supplied.)

and held (page 497):

> "*Such* contracts were deemed illegal and were unenforcible at common law. But the resulting restraints of trade were not penalized and gave rise to no actionable wrong. Certain classes of restraints were not outlawed when deemed reasonable, usually because they served to preserve or protect legitimate interests, previously existing, of one or more parties to the contract." (Italics supplied.)

And (page 500):

> "• • • this Court has not departed from the conception of the Sherman Act as affording a remedy, public and private, for the public wrongs which flow from restraints of trade in the common law sense of restriction or suppression of *commercial competition*. In the cases considered by this Court since the *Standard Oil* case in 1911 some form of restraint of *commercial competition* has been the *sine qua non* to the condemnation of contracts, combinations or conspiracies under

[17] This Court's description of the common-law doctrines relating to restraint of trade is quite different from the description in the first *American Medical Ass'n* case wherein the court below said (p. 708): "The common-law rule was applied principally to contracts whereby a man promised not to engage in his occupation, • • •."

> the Sherman Act, and in general restraints upon competition have been condemned *only when their purpose or effect was to raise or fix the market price. It is in this sense that it is said that the restraints, actual or intended, prohibited by the Sherman Act are only those which are so substantial as to affect market prices.*" (Italics supplied.)

And (p. 503):

> "Since, in order to render a labor combination effective it must eliminate the competition from non-union made goods * * * an elimination of price competition based on differences in labor standards is the objective of any national labor organization. But this effect on competition has not been considered to be the kind of curtailment of price competition prohibited by the Sherman Act."

Thus it is clear that the acts charged against petitioners are not within the Sherman Act as construed by this Court in the *Apex* case. The *Apex* case held that no restraint could be a violation of the Sherman Act unless it was exercised and used in such a way as to fix prices or suppress competition to the extent that market prices are substantially affected to the injury of the public.

The indictment herein did not attempt to charge price fixing or suppression of competition that affected market prices to the injury of the public. No such contention ever appeared until after the opinion in the *Apex* case. The indictment charged that the restraints were intended to prevent doctors from serving on the GHA staff, to prevent consultations between doctors on the staff of GHA and medical society members, and to prevent such staff doctors from operating in the hospitals. Not one word is said in the charging clauses of the indictment (R. 14, 15) about prices, price fixing or suppression of competition.

The concurring opinion of Stone, C. J., in *United States* v. *Hutcheson*, 312 U. S. 219, 241, 242, points out that a prosecution under the Sherman Act must fail if the indictment fails to charge price fixing or that competition has been suppressed to the extent that market prices have been substantially affected. As no such charge appears in this indictment and as no evidence thereon could be or was received this prosecution must fail.

The Government contended and the first *American Medical Ass'n* case held that the restraints complained of, obstructed citizens in the pursuit of their occupations, whether commercial or not, and that the Sherman Act was a general remedial statute intended to protect against such restraints. Then came this Court's decision in the *Apex* case, pointing out that the Sherman Act was not a general remedial statute, and was not intended to supersede local police laws, but was confined to price fixing or suppression of competition affecting market prices to the injury of the public. In the second *American Medical Ass'n* case the court sought to ignore the general remedial theory, established in its first opinion, by stating that GHA and petitioners were in "the bitterest kind of competition," and that a restraint visited upon GHA would prevent such competition, and therefore the troublesome *Apex* rule was complied with. But the court below failed to note that no such charge was pleaded in the indictment, was considered in the first *American Medical Ass'n* case, or presented upon the trial. Substituting an essential charge of price fixing or suppression of competition to that end *now*, is obviously an effort to avoid the effect of the *Apex* case and the concurring opinion of Stone, C. J., in the *Hutcheson* case, and comes a little late.

The indictment fails to charge and the proof fails to show any restraints on the Washington hospitals that violate the Sherman Act.

In that regard the indictment charges (R. 15): "for the purpose of restraining the Washington hospitals in the business of operating such hospitals."

Manifestly the thought which one would receive from such a charge was that any restraint on the Washington hospitals would violate the Sherman Act. There is no charge as to what activities of the hospitals were "restrained"; there is no charge that prices of hospital services were fixed or that competition between hospitals was suppressed to the extent that market value of hospital services were substantially affected to the injury of the public. There being no allegation of that nature in the indictment, there could have been no proof on those indispensable elements.

Such evidence as there was that related to the hospitals concerned the matter of some of GHA's hired doctors obtaining staff privileges at such hospitals. Thus respondent stated in its brief in opposition to certiorari (p. 11) that the hospital evidence concerned the denial by the hospitals of staff privileges to GHA's staff and (p. 12) the sending of DMS of a *recommendation* to the hospitals that they appoint members of their staffs from members of DMS and AMA.

No evidence was offered to prove any "restraints" whatsoever upon the hospitals. Certainly there was no evidence showing that prices at any hospital were fixed or that the competition between any hospitals or the hospitals and anyone else was affected *in any way*, much less so suppressed that the prices of hospital services were affected substantially to the injury of the public.

We submit that respondent, in effect, has conceded, that its theory of the charge and the evidence is that they involve (Brief in Opposition, p. 19) "restraints" against GHA in "competing with doctors engaged in private practice." Nowhere in its brief in opposition does the respondent de-

scribe the business of a single hospital, much less attempt to show a "restraint" on the business of any hospital.

In the *Apex* case the Court (p. 499, 500) stated that the restraints which were condemned by the Sherman Act were those found "unreasonable or undue" and the effect "substantial". The court said that the restraints prohibited are those which are so substantial as to affect market prices and deprive purchasers or consumers of the advantages of free competition. But the advantages of free competition were not thought to be unduly affected unless market prices were fixed or there was a suppression of competition to the extent that market prices are substantially affected to the injury of the public. The court points out that a combination of employees causes restraint, but such restraint is not the restraint contemplated by the Act, and such restraint is not thought to be a violation of the Act and is not thought to be unreasonable, principally because it did not affect market prices. The effect on competition by efforts to make a labor combination effective was also not thought to be within the prohibition of the Sherman Act.

Thus the *Apex* case does seem to imply a consideration of the amount and extent of restraint and the intention involved. The government insists that petitioners did three things: (1) prevented their members from accepting employment from GHA; (2) prevented their members from consulting with GHA doctors; and (3) sought hospital preferences for their members. If the evidence in the *Apex* case failed as a matter of law to show an intent to unreasonably restrain trade, we submit that the evidence here fails likewise to establish the requisite intent to unreasonably restrain trade.

The rules and regulations of DMS came into play only when GHA sought to proselyte petitioners' members. In the application of the rules to the employment controversy GHA's scheme brought into existence all of the known facts

concerning that scheme, and they must necessarily be considered. That is so in order to ascertain whether the evidence shows the necessary intent and intended restraints that are direct and unreasonable.

The evidence showed that GHA was incorporated to hire doctors to do its medical work (R. 295-298, 306). GHA sought "to hire" members of DMS to do its corporate medical work (R. 306). Such contracts of hire brought into the controversy, insofar as members of DMS were involved, the employment rules of DMS and the provision in the constitution of DMS that members' contracts of employment be approved by DMS (R. 1266, 1272).

The question of whether approval by DMS to the employment of its members by GHA be given or withheld, made all the facts concerning GHA's scheme of importance.

In the ensuing controversy, which was discussed by members of DMS and officers and trustees of GHA (R. 176-199), the employment rules of DMS preserving, among other things, free competition, were made known to GHA and it was questioned concerning its ability as set up to furnish good medical care, whether GHA's financing was sound, whether its plan of employing doctors on a full-time salary basis to the exclusion of the general profession might not conflict with the employment rules and constitution of DMS because the plan destroyed competition and tended to destroy the private practice of medicine.

A basis of employment of all members of DMS, who wished to participate, to furnish medical services to members of GHA, was suggested to GHA (R. 181, 185, 304).

GHA refused to divulge its plans of financing, stated it was going ahead with its plans even if they violated the employment rules of DMS and that the basis of employment suggested was not acceptable to GHA (R. 201).

As GHA employed members of DMS, its plan and its practices were important in the controversy that followed

between such employed members and the other members of DMS. In that dispute over employment entered the facts that *respondents'* United States Attorney and the law-enforcement officers of the District of Columbia had held GHA to be illegal and had ordered GHA to cease operating in violation of law (R. 373); that counsel advised petitioners that GHA's practices were illegal; that GHA was wrongfully using Government property, discount rates and $40,000 of public money, and an illegal "check-off" system to enforce the payment of dues (R. 376-378), and that the Comptroller General and a Committee of Congress had so held publicly; that GHA was subsidized, coerced members, solicited and advertised; and that GHA was not rendering and could not render good medical services. All such facts appear throughout the evidence and are also detailed in petitioners' offer of proof (R. 940-945) and are involved in all of the activities attempted to be proven to petitioners. Such facts negate any intent to unreasonably and directly restrain trade, and merely showed an effort to protect petitioners, their organizations and their members.

Therefore we insist that the alleged restraints in this case are not within the limits of the rule of the *Apex* case as to "unreasonable" restraint and "substantial" effect.

THE ACTIVITIES OF THE PETITIONERS SHOWN BY THE EVIDENCE WERE WITHIN THEIR LAWFUL RIGHTS, AND THE PURPOSES CHARGED TO PETITIONERS SHOULD BE INTERPRETED IN THE LIGHT OF THOSE RIGHTS.

While medical societies and member doctors have not heretofore been subjected to prosecution under the Sherman Act,[18] they have been the subject of many private civil

[18] The prosecution in this case was conceived in the opinion of a judge of a trial court in England, *Pratt* v. *British Medical Association*, 1 K. B. (1919) 244. That opinion arose out of an action in tort for damages on

suits quite similar, in allegation, to the facts alleged in this indictment. In such cases, instead of the interested parties seeking to persuade the United States to assume the burden of the case, the complainants themselves, have brought actions of various kinds. Practically every question of law and fact which is involved in this proceeding, has been fully considered and decided in those decisions.

The following decisions uniformly support the contentions which petitioners are urging in this case, and we ask particular attention of the Court to them.

In *Harris* v. *Thomas*, (Tex. Civ. App.) 217 S.W. 1068 it was said (pp. 1076, 1077):

> "It seems to be appellant's contention that his exclusion from the organization and appellees' refusal to affiliate with him * * * influenced others against him and deprived him of the fruits of his preparation as a practitioner. If appellees were acting to further their legitimate purpose or to advance the practice of their profession, this, we think, would be justified even if it had the result claimed by appellant. Unless the organization was itself illegal or the methods used by it were wrongful, appellant has no just complaint."
>
> "A voluntary association has the power to enact laws governing the admission of members and to prescribe the necessary qualifications for membership * * * Membership therein is a privilege which the society may accord or withhold at its pleasure, with which a court of equity will not interfere, even though the arbitrary rejection of a candidate may prejudice his material interest. * * * We think such a society as the Potter County Medical Association is legitimate and lawful. If it is an organization which is largely

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the theory that defendants maliciously conspired to injure plaintiff doctors. Actual malice and social persecution were involved. The judgment for plaintiffs was not appealed. Three years later the Appellate Division of the Kings Bench in the case of *Ware and DeFreville* v. *Motor Trade Association*, 3 K. B. (1921) 40, severely criticized the *Pratt* opinion, stating it was "quite impossible to harmonize" it with other decisions.

composed by the appellee doctors, and if it does directly or indirectly affect the material interest of appellant, or in some degree affect him as a nonmember, this would not justify the courts in denouncing it as an illegal or unlawful consiracy. The association has the right to advance its purpose or interest, and that of its members by all legitimate means. * * *"

In *Porter* v. *King County Medical Society*, 186 Wash. 410, 58 P. 2d 367, it was said (pp. 370, 372):

"That is to say, Doctors Sweet and MacKinnon, under this contract with the medical society, were required to obey the by-laws of the society or by breach thereof subject themselves to the penalty of suspension or expulsion from the society. It is not at all material how selfish or unselfish the objects of the medical society are if same are legitimate. It cannot be successfully contended that the medical society did not have the right to adopt the by-law in question. Whether such by-law or rule was just, reasonable, or wise is a question of policy which concerns only the medical society and its members. The medical society, in the enforcement of its by-laws for the direct purpose of benefit to itself and to its members is not answerable for damage incidentally resulting to a third person. So long as one remains a member of the medical society, such member can be compelled under his contract with the society to obey the laws, rules and regulations of the society or suffer the penalty of fine, suspension, or expulsion.

"* * * No right of appellants, who were nonmembers, was invaded by respondent medical society when it established its code of ethics and insisted upon compliance therewith through threat of expulsion of an offending member."

To the same effect see:

Bryant v. *District of Columbia Dental Society*, 26 App. D. C. 461; *Newton* v. *Board of Commissioners*, 86 Colo. 446, 282 P. 1068; *Olander* v. *Johnson*, 258 Ill. App. 89;

Irwin v. *Lorio*, 169 La. 1090, 126 So. 669; *McDonald* v. *Massachusetts General Hospital*, 120 Mass. 432; *Weyrens* v. *Scotts Bluff County Medical Society*, 133 Neb. 814, 277 N. W. 378; *Branagan* v. *Buckman*, 67 Misc. 242, 122 N. Y. S. 610, aff'd. 130 N. Y. S. 1106 and *Strauss* v. *Marlboro County General Hospital*, 185 S. C. 425, 194 S. E. 65.

Those decisions leave little to be said concerning the theory of the Government that members who refuse to abide by the rules and regulations, may still secure or retain the benefits and advantages of such membership, without any right on the part of the medical society to pursue proper disciplinary measures. While those cases did not involve the Sherman Act, they establish that petitioners had the lawful right to do every act which they did do. That being so, the intent and purpose here involved should be interpreted in the light of those rights.

NONE OF THE FIVE ACTIVITIES ALLEGED TO HAVE BEEN RESTRAINED WERE "RESTRAINED" IN VIOLATION OF THE SHERMAN ACT.

The evidence did not show a restraint as required by the *Apex* case on any one of the five activities alleged to have been restrained.

1. Was GHA restrained? We insist that the prices of GHA's activities were not fixed and competition therein was not suppressed to the extent that market prices were substantially affected to the injury of the public.

2. Were the members of GHA restrained? We insist that the prices of the activities of GHA's members were not fixed nor competition in the activities of GHA's members suppressed to the extent that market prices of their activities were substantially affected to the injury of the public.

3. Were the doctors employed by GHA restrained? We insist that the prices of the activities of GHA's doctors

were not fixed, nor competition in the activities of GHA's doctors suppressed to the extent that market prices of their activities were substantially affected to the injury of the public.

Was the medical profession generally restrained? We insist that the prices of the activities of the medical profession generally were not fixed, nor competition in the activities of the medical profession generally suppressed to the extent that market prices of their activities were substantially affected to the injury of the public.

5. Were the Washington hospitals restrained? We insist that the prices of hospital activities were not fixed nor competition in the hospital activities suppressed to the extent that market prices of their activities were substantially affected to the injury of the public.

As to the denial by the trial court of petitioners' motions to direct a verdict as to *each* and all of the five charges of restraint, and as to the instructions of the court that the jury might find petitioners guilty if any one of the five activities were restrained, our argument at the end of Point I in this brief is applicable here. If there is an insufficient charge or insufficient evidence as to any one of the five charges of restraint here involved, prejudicial error was committed against petitioners and the judgments below should be reversed.

III.

A Dispute Concerning Terms and Conditions of Employment of Doctors, Which Was Within the Clayton and Norris-La Guardia Acts, Was Involved, in Which Petitioners Were Interested. The Case is Therefore Not Within the Sherman Act.

In the second *American Medical Ass'n* case the court below seemed to concede (p. 242) that a dispute concerning

terms and conditions of employment of doctors was involved in this case, in which petitioners were interested, but held that the Clayton and Norris-LaGuardia acts were not applicable for two reasons: (1) that the Acts do not include doctors working for a monthly salary or lawyers, chemists, teachers, or actors, but are limited to disputes between working men, wage-earners, or laborers, on the one hand, and aggregated capital on the other; and (2) even though petitioners were interested in a labor dispute within the meaning of the Clayton and Norris-LaGuardia acts, if their activities involved a restraint upon competition, they are nevertheless within and subject to the Sherman Act (p. 244). We respectfully submit that such an interpretation of the Clayton and Norris-LaGuardia acts is erroneous. The court below has held that the liberal arts and learned professions are "trade" within the meaning of the Sherman Act and then held they are not "trade" within the meaning of the word "trade" and other similar words as used in the Clayton and Norris-La Guardia acts. Such a holding is not logical. We insist that if the practice of medicine is "trade" or even if the doctors employed on a monthly salary by GHA are in "trade" or even if GHA is in "trade" and employs doctors on monthly salaries to carry on that "trade" the Clayton and Norris-LaGuardia acts are applicable here.

The dispute concerning terms and conditions of employment of doctors arose in the following manner: When a committee of the executive committee of DMS and representatives of GHA conferred for the first time (R. 290-309), a controversy arose, the matrix of which was the terms and conditions of employment by GHA of members of DMS to perform GHA's corporate medical work. GHA rejected an offered basis of employment of members of DMS (R. 181, 185, 304), insisted upon dictating the terms, conditions, and method of payment of compensation and of

employing members of DMS, regardless of whether GHA's plans were illegal or in conflict with the constitution and employment rules of DMS (R. 201). This controversy over terms and conditions of employment continued throughout the indictment period and was involved in all of the activities charged or proven; hence because of the Clayton and Norris-LaGuardia Acts this case is not within the Sherman Act. *United States* v. *Hutcheson*, 312 U. S. 219; *United States* v. *Carrozzo*, 37 F. Supp. 191, affirmed 313 U. S. 508; *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U. S. 552; *Drivers Union* v. *Lake Valley Co.*, 311 U. S. 91; *Gundersheimer's, Inc.*, v. *Bakery, etc., I Union*, 73 App. D. C. 352, 353, 119 F. 2d 205, 206; *International Ladies G. W. Union* v. *Donnelly G. Co.*, 119 F. 2d 892, 898; *International Assn.* v. *Pauly Jail Bldg. Co.*, 118 F. 2d 615, 621; *United States* v. *American Federation of Musicians*, — F. Supp. — (D. C. Ill., No. 4541, decided Oct. 14, 1942);[19] and the plain language of the Clayton and Norris-La Guardia Acts.

If doctors be in trade, it necessarily follows that Secs.

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[19] The *Musicians* case involved a bill in equity by United States to enjoin the American Federation of Musicians, comprising 140,000 musicians, which were virtually all the musicians in the nation who make music for hire, from violating the Sherman Act by restraining commerce in phonograph records, transcriptions and radio broadcasts. The bill alleged "that a purpose of the conspiracy is to eliminate from the market the manufacture, sale and use of musical compositions mechanically recorded on phonograph records and electrical transcriptions unless the persons engaged in such businesses enter into agreements with the defendant union to hire such useless and unnecessary labor as the defendant union may demand; that a further purpose of said conspiracy is to exclude from the market the competition of anyone who does not exclusively employ members of the defendant union." The court held the Clayton and Norris-La Guardia Acts were applicable and held that "the acts complained of may not be considered or held to be violations of any law of the United States" and granted defendants' motion to dismiss the bill.

And compare "labor dispute" immunity conferred by Anti-Racketeering Act as interpreted in *United States* v. *Local 807 of I. Brotherhood, etc.*, 118 F. 2d 684, 686, 689, affirmed 315 U. S. 521.

6 and 20 of the Clayton Act are applicable. Sec. 6 provides that the labor of a human being is not a commodity of commerce. Sec. 20 covers all employers and employees including corporations and associations and, as expanded by Sec. 13 of the Norris-LaGuardia Act, includes all persons and associations involved in a dispute over terms or conditions of employment who are engaged in the same *industry, trade, craft,* or *occupation,* or have direct or indirect interests therein. The Acts cover any third party, even though that party be a corporation not in trade [20] and employers and their associations [21] even if only *indirectly* interested in the controversy. The Clayton and Norris-LaGuardia Acts cannot logically be confined exclusively to the laborer who works for wages. Their plain terms require that they be applied to all "who are engaged in the same *industry, trade, craft,* or *occupation.*"

As GHA's willful employment (R. 173, 174) of doctor-members of DMS (and AMA) and the terms and conditions of such employment was the matrix of this controversy,[22] it follows that the acts charged or proven to petitioners are not within the Sherman Act.

The charge is that petitioners restrained GHA in its employment of doctors to render medical services to the members of GHA. How, if doctors are in "trade" under the Sherman Act, and are in a dispute over employment, they are not within the words "trade" or "occupation," as those words are used in the Clayton and Norris-La Guardia Acts, is difficult for us to understand.

The record in this case shows that petitioners, GHA, its members and doctors, other Washington doctors, and Washington hospitals were all directly (and certainly indirectly) interested in a controversy concerning terms and conditions

[20] *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U. S. 552.
[21] *Drivers Union* v. *Lake Valley Co.*, 311 U. S. 91, 93, 94.
[22] *Columbia River Packers Assn.* v. *Hinton*, 315 U. S. 143, 147.

of employment of doctors by GHA within the Clayton and Norris-La Guardia Acts.

If doctors are "tradesmen" any controversy or dispute that may arise between themselves or between them and any other person concerning terms and conditions of employment of doctors is lifted bodily out of the Sherman Act by the Clayton and Norris-La Guardia Acts.

In *United States* v. *Hutcheson*, 312 U. S. 219, the conceded facts showed an admitted conspiracy on the part of the labor unions and their officers to restrain interstate trade and commerce, to engage in primary and secondary boycotts, to circulate black lists, to induce and coerce breaches of contracts, and like oppressive purposes, with force and violence, for the purpose of restraining trade. This Court held that the legality of such conduct is to be determined only by reading the Sherman Act, the Clayton Act, and the Norris La-Guardia Act as a harmonizing text. In the light of the three Acts this Court measured the conduct described in the indictment in the *Hutcheson* case and concluded that the defendant labor unions and their officers were engaged in a "dispute" or "labor dispute" as defined in the Clayton and Norris-La Guardia Acts, and therefore they were lifted bodily out of the Sherman Act.

In the first *American Medical Ass'n* case the court below held (p. 712) that when labor unions go so far as to impose unreasonable restraints on the operations of their field, they become subject to the prohibition of the Sherman Act, and referred to and relied on such cases as *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443, and *Bedford Cut Stone Company* v. *Stone Cutters' Assn.*, 274 U. S. 37. The court below also held in that opinion (p. 711) that Congress did not provide that one class, any more than another, might impose restraints or that one class, any more than another, might be subjected to restraint. That

theory of the meaning of the Sherman, Clayton and Norris-La Guardia Acts was all changed by the *Hutcheson* case. In fact, the United States in its brief in the Supreme Court in the *Hutcheson* case relied on the first *American Medical Ass'n* case, the *Duplex Printing Press Co.* case, the *Bedford Cut Stone Company* case, and *Pratt* v. *British Medical Association*, 1 K. B. (1919) 244, but this Court abandoned those cases and similar cases and decided henceforth the Sherman Act would be construed in the light of the Clayton and Norris-La Guardia Acts, and certain classes of persons—who were engaged in the same industry, trade, craft, or occupation, or had direct or indirect interest therein, if and when engaged in a dispute or controversy concerning terms or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms and conditions of employment, regardless of whether or not the disputants stand in proximate relation of employer and employee—would be lifted bodily out of the Sherman Act, and it would no longer apply to them.

The *Hutcheson* case held (p. 231) that the Norris-La Guardia Act removed the fetters of such decisions as the *Duplex* case and said (p. 236):

> "The Norris-La Guardia Act was a disapproval of *Duplex Printing Press Co.* v. *Deering*, supra, and *Bedford Cut Stone Co.* v. *Journeymen Stone Cutters Assn.*, 274 U. S. 37 as the authoritative interpretation of Section 20 of the Clayton Act, for Congress now placed its own meaning upon that section. • • • In this light Section 20 removes all such allowable conduct from the taint of being a 'violation of any law of the United States,' including the Sherman Law."

In the *Hutcheson* case, in answer to the reliance placed by the United States upon such cases as the *Duplex* case,

the *Pratt* case, and the first *American Medical Ass'n* case, this Court said (p. 236):

> "There is no profit in discussing those cases under the Clayton Act which were decided before the courts were furnished the light shed by the Norris-La Guardia Act on the nature of the industrial conflict. And since the facts in the indictment are made lawful by the Clayton Act in so far as 'any law of the United States' is concerned, it would be idle to consider the Sherman Law apart from the Clayton Act as interpreted by Congress. Cf. *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469."

This Court further said (p. 232):

> "So long as a union acts in its self-interest and does not combine with non-labor groups, the licit and the illicit under Sec. 20 are not to be distinguished by any judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means."

It cannot be said that the Clayton and Norris-La Guardia Acts apply or were intended to apply only to labor unions and their activities, because the case of *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U. S. 552, has settled that contention. In that case the defendants charged with a violation of the Sherman Act were not labor unions. On the contrary, the New Negro Alliance was a corporation composed of colored persons, organized for the mutual improvement of its members and the promotion of civic, educational, benevolent, and charitable enterprises. Some of the defendants were officers of New Negro Allianee, a corporation. The relationship of employer and employee did not exist between the New Negro Alliance, its officers, and the Sanitary Grocery Co., which the Alliance and its officers undertook to picket and boycott, accompanied with

the circulation and publication of black lists, intimidation, coercion, and disorderly conduct. This Court held that the Norris-La Guardia Act applied to and protected the New Negro Alliance and its officers. In *United States* v. *American Federation of Musicians*, supra, it was held that musicians and their national association were within the Acts, and that the Sherman Act did not apply to them.

To the same effect as the *Hutcheson* case are *United States* v. *Carrozzo*, 37 F. Sup. 191, affirmed 313 U. S. 508, and *Drivers Union* v. *Lake Valley Co.*, 311 U. S. 91, and see *A. F. of L.* v. *Swing*, 312 U. S. 321, 326.

The result of those cases is, that if petitioners and their members were engaged in the same industry, trade craft, or occupation as GHA, its members, its doctors, other Washington doctors and the Washington hospitals, or had direct or indirect interests therein, and were engaged in a dispute or controversy concerning terms or conditions of employment or concerning associations or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms and conditions of employment, their activities would not violate the Sherman Act.

Petitioners insist that the evidence clearly discloses that the parties alleged to have been restrained and petitioners were engaged in a "dispute" as defined by the Clayton and Norris-La Guardia Acts. Indeed, the indictment alleged and the Government insisted that the acts of the defendants were all done in the selfish, self-interest of the defendants themselves, and that the controversy covered by the indictment was between rival methods of rendering medical services. The United States in its brief in the court below conceded (p. 25): "Thus it appears that this case is the outgrowth of conflict between rival systems for the distribution of medical care."

Bodies of men organized and associated together for the purpose of engaging, or who are engaged, in some legitimate

and lawful enterprise, may adopt and enforce such reasonable rules and regulations as may be needed to promote harmony between the members and advance the best interests of the enterprise or business in which they are engaged, although the effect of such rules and regulations may be to limit the freedom of action that the members might enjoy if they were not connected with the association, and the further effect may be to injure the business of some other party.[23]

If the bodies of men so organized and associated together become engaged in a controversy or dispute with persons who are engaged in the same industry, trade, craft, or occupation, or who have direct or indirect interests therein, about rules or regulations or about any other matter or thing concerning terms or conditions of employment, or concerning association or representation of persons in

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[23] *Levering & G. Co.* v. *Morrin*, 289 U. S. 103; *Anderson* v. *United States*, 171 U. S. 604; *Barker Painting Co.* v. *Brotherhood of Painters, etc.*, 57 App. D. C. 322, 23 F. 2d 743 (Cert. den. 276 U. S. 631); *Bryant* v. *District of Columbia Dental Society*, 26 App. D. C. 461; *United States* v. *Metropolitan Club*, 11 App. D. C. 180; *Edelstein* v. *Gillmore*, 35 F. 2d 723; *Rockwood Corp.* v. *Bricklayers' Local Union*, 33 F. 2d 25; *International Organization, etc.* v. *Red Jacket, C. C. & C. Co.*, 18 F. 2d 839; *Hart* v. *B. F. Keith Vaudeville Exch.*, 12 F. 2d 341; *Tilbury* v. *Oregon Stevedoring Co.*, 8 F. 2d 898; *United States* v. *Fur Dressers, etc. Assn.*, 5 F. 2d 869; *Alaska S. S. Co.* v. *International Longshoremen's Assn.*, 236 F. 964; *Booker & Kinnaird* v. *Louisville Board*, 188 Ky. 771, 224 S. W. 451; *George J. Grant Const. Co.* v. *St. Paul Bldg. Trades Council*, 136 Minn. 167, 161 N. W. 520; *O'Keefe* v. *Local 463 of United Assn. of Plumbers*, 277 N. Y. 300, 14 N. E. 2d 77; *Exchange Bakery & Restaurant* v. *Rifkin*, 245 N. Y. 260, 157 N. E. 130.

These rights are applicable specifically to doctors, hospitals and medical societies:

Bryant v. *District of Columbia Medical Society*, 26 App. D. C. 461; *Newton* v. *Board of Com'rs.*, 86 Col. 446, 282 P. 1068; *Olander* v. *Johnson*, 253 Ill. App. 89; *Irwin* v. *Lorio*, 169 La. 1090, 126 So. 669; *McDonald* v. *Massachusetts General Hospital*, 120 Mass. 432; *Weyrens* v. *Scotts Bluff County Medical Society*, 133 Neb. 814, 277 N. W. 378; *Branagan* v. *Bookman*, 122 N. Y. S. 610, aff. 130 N. Y. S. 1106; *Strauss* v. *Marlboro County General Hospital*, 185 S. C. 425, 194 S. E. 65; *Harris* v. *Thomas*, 217 S. W. 1068 (Tex. Civ. App.); *Porter* v. *King County Medical Society*, 186 Wash. 419, 58 P. 2d 367.

negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee, the Clayton and Norris-La Guardia Acts operate to lift them bodily out of the Sherman Act.

The conference between a special committee of the executive committee of the Medical Society of the District of Columbia and Mr. Penniman, president of GHA, Dr. Brown, medical director of GHA, and Mr. Zimmerman on June 24, 1937 (R. 290) and the conference between a special committee of the executive committee of DMS and the board of trustees and medical director of GHA on July 26, 1937 (R. 176-197), and much of the other evidence in the record clearly and plainly show that petitioners became engaged in a controversy or dispute with persons who were engaged in the same occupation, or who had direct or indirect interests therein, concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, and therefore petitioners were entitled to the protection of the Clayton and Norris-La Guardia Acts and were not within the Sherman Act.

From the indictment and the record it is clear that petitioners were engaged in a "dispute" with others in the same occupation within the meaning of the Clayton and Norris-La Guardia Acts, and consequently they were not within nor subject to Sec. 3 of the Sherman Act.

Certainly, under the evidence, petitioners' sixty-fifth instruction (R. 1493) correctly charged the law applicable. It charged that if the jury found a dispute or controversy over employment existed between GHA and all others involved, including petitioners and the Washington hospitals, and *all* involved were directly or indirectly interested in

the same trade or occupation, and further found the defendants acted in self-interest peacefully and without violence then they should have been acquitted. It was reversible error to deny this instruction as it was not covered in the charge.

Respondent necessarily contends that no dispute concerning terms or conditions of employment is involved in this case in which petitioners were even indirectly interested. Petitioners insist otherwise. There are many instances to so show.[24] The situation is exactly the same as if

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[24] 1. The constitution of DMS required its members to submit to the proper Committees of DMS any contract of employment which they might enter into with an employer (R. 1265, 1266). GHA and its doctors declined to submit the contract of employment of GHA doctors by GHA (R. 173). This violation of the constitution was one of the charges against Dr. Scandiffio and one of the reasons for his expulsion from DMS (R. 1272).

2. The question whether doctors should work for a monthly salary for an organization which sold their services to the public or whether such an organization should pay the doctors on a fee-for-service basis was also involved (R. 179, 304).

3. The question whether GHA, a corporation, was violating federal statutes and unlawfully practicing medicine or insurance and consequently whether the doctors in the employee relationship to GHA would be violating the law (R. 180, 187).

4. The principles of medical ethics forbade a doctor to solicit patients or advertise for them, and there was a question whether these principles could be evaded if GHA, the doctors' employer, did the advertising and soliciting. There was also involved in this point coercing the Government employees to join GHA, the doctors' employer (R. 179, 180).

5. The question whether GHA by virtue of its right to employ and discharge a doctor and in other respects dominated and directed the quality and extent of medical services rendered by doctor employees of GHA to the patients of GHA, in violation of the employment rules of DMS (R. 303).

6. The question of the sale of medical services by GHA to HOLC and how it affected the terms and conditions of employment of other doctors in the District (R. 184, 186, 196).

7. The question of the subsidies to GHA and whether they affected the terms and conditions of employment of other doctors in the vicinity (R. 295, 300-302).

8. The question whether the kind and quality of medical services rendered by GHA brought the doctors generally, and hence the members of peti-

a corporation, a carpenter contractor, sought to employ union carpenters on a monthly salary instead of paying them the hourly rate required by the union. Does anyone suppose that under such circumstances a dispute between the carpenter contractor and the carpenter union, would not be one concerning terms and conditions of employment?

Many statements in respondent's brief in the second *American Medical Ass'n* case show that there was a dispute or controversy concerning terms or conditions of employment in which the petitioners had, at least, an indirect interest.[25]

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tioners, into disrepute, and thereby affected the terms and conditions of the employment of petitioners' members in the vicinity (R. 179, 182, 189).

9. At the conference of July 26, 1937, between a sub-committee of the Executive Committee of DMS and the trustees of GHA, the doctor members of said subcommittee, while they complained of a corporation practicing medicine (R. 178), also asked whether GHA could not continue to collect monthly dues from its members and employ the doctor members of DMS to render medical services to GHA members (R. 181, 185, 304), but as respondent said in its brief in the second *American Medical Association* case (p. 22): "GHA, desiring to obtain the advantages of group practice, was not receptive to the suggestion."

10. The question of whether GHA's plan of employment did not disrupt free competition, free choice of physicians, and tend to destroy the private practice of medicine (R. 195).

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[25] 1. Respondent stated (B. 3) GHA was engaged in rendering medical care and interested in employing qualified doctors.

2. Respondent stated (B. 3, 4) a controversy arose over the refusal of members of DMS to serve (be employed on) on GHA's staff or consult (work) with GHA's employee-doctors.

3. Respondent stated (B. 7) that petitioners have principles and rules concerning compensation, practice in a community, reasonable competition and medical care on a salary basis.

4. Respondent stated (B. 18, 19, 22) GHA was "hiring • • • salaried full time physicians," a fact known to petitioners "in violation of (petitioners') Principles of Medical Ethics," and sought to hire members of DMS; that a subcommittee of the Executive Committee of DMS suggested a basis under which GHA "would use the members of the Society to provide medical care of GHA members"; that GHA was "not receptive to the suggestion" and that GHA knew the members of DMS "were forbidden by the constitution • • • *from accepting employment or consulting*

We therefore submit that the word "trade" in Sec. 3 of the Sherman Act does not include the practice of medicine and the rendering of medical services as described in the indictment, because they are not "commercial" in nature; and even if such activities are "trade", they were not "restrained" because prices of such activities were not fixed or competition in such activities was not suppressed to the extent that market prices thereof were substantially affected to the injury of the public; and even if such activities were "trade" and were "restrained" any such restraints grew out of a dispute concerning terms and conditions of employment of doctors, which was within the Clayton and Norris-La Guardia Acts, and in which petitioners were interested and therefore this case is not within the Sherman Act.

The attempt should never have been made to stretch an old statute (the Sherman Act) to new uses, to which it is not adapted, and for which it was not intended. *United States* v. *Gradwell*, 243 U. S. 476, 489; *Fasulo* v. *United States*, 272 U. S. 620, 628, 629. In the *Apex* case (p. 513) this Court pointed out that the remedy for alleged wrongs existing outside the proper purview of the Sherman Act must be found in other applicable statutes and laws.

(working) with the members of its staff unless GHA was approved by the Society."

5. Respondent stated (B. 27) that GHA's action in refusing to employ members of DMS in conformity with the rules and regulations of DMS (terms and conditions of employing doctors) brought GHA in "automatic" conflict with the constitution and regulations of DMS.

6. Respondent's statements (B. 28-31) concern a dispute pertaining to the employment of doctors and the rendition of medical care to GHA members.

7. Respondent agrees (B. 69) that the record discloses a controversy between petitioners and the GHA doctors concerning terms and conditions of their employment, but argues that this controversy was but an element of and subsidiary to petitioners' controversy with GHA.

Conclusion.

It is respectfully submitted that the judgments below should be reversed.

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APPENDIX.

Sec. 3 of the Sherman Act of July 2, 1890, c. 647 (26 Stat. 209), 15 U. S. C. Sec. 3, reads in part:

"Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce * * * of the District of Columbia, or in restraint of trade or commerce between * * * the District of Columbia and any state or states or foreign nations, is declared illegal."

Sec. 1 of the Clayton Act of October 15, 1914, c. 323 (38 Stat. 730), 29 U. S. C. 53, reads:

"The word 'person' or 'persons' wherever used in section 52 of this title shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country."

Sec. 6 of the Clayton Act of October 15, 1914, c. 323 (38 Stat. 731), 15 U. S. C. 17, reads in part:

"The labor of a human being is not a commodity or article of commerce."

Sec. 20 of the Clayton Act of October 15, 1914, c. 323 (38 Stat. 738), 29 U. S. C. 52, reads:

"No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particu-

larity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

"And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States."

Sec. 4 of the Norris-La Guardia Act of March 23, 1932, c. 90 (47 Stat. 70), 29 U. S. C. 104, reads:

"No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interest in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title."

Sec. 5 of the Norris-LaGuardia Act of March 23, 1932, c. 90 (47 Stat. 71), 29 U. S. C. 105, reads:

"No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 104 of this title."

Sec. 6 of the Norris-LaGuardia Act of March 23, 1932, c. 90 (47 Stat. 71), 29 U. S. C. 106, reads:

"No officer or member of any association or organization, and no association or organization participating or

interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof."

Sec. 8 of the Norris-LaGuardia Act of March 23, 1932, c. 90 (47 Stat. 72), 29 U. S. C. 108, reads:

"No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration."

Sec. 13 of the Norris-LaGuardia Act of March 23, 1932, c. 90 (47 Stat. 73), 29 U. S. C. 113, reads:

"When used in sections 101-115 of this title, and for the purposes of such sections—(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or association of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as defined in this section) of 'persons participating or interested' therein (as defined in this section).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is

sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft or occupation.

(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term 'court of the United States' means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia."

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IN THE

Supreme Court of the United States

October Term, 1942

No. 201

AMERICAN MEDICAL ASSOCIATION, a Corporation, *Petitioner*,

vs.

UNITED STATES OF AMERICA, *Respondent*.

No. 202

THE MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA, A CORPORATION, *Petitioner*,

vs.

UNITED STATES OF AMERICA, *Respondent*.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

REPLY BRIEF FOR PETITIONERS

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PRESS OF JUDD & DETWEILER, INC., WASHINGTON, D. C.

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REPLY BRIEF FOR PETITIONERS

Reply to Respondent's Statement.

Respondent in its statement (Br. 5) summarizes what it says are the facts set forth in the indictment. That summary merely serves to emphasize the complete absence

of ultimate facts necessary to support the charge. The indictment does not charge a fixing of prices or a suppression of competition to the extent that prices were substantially affected to the injury of the public, concerning any one or all of the five activities alleged to have been restrained. Paragraphs 34 through 39 of the indictment (R. 14-21), which are the charging part, setting forth the conspiracy and its purposes, do not mention price fixing or suppression of competition.

Respondent says (Br. 14) that the selection of doctors for the staff of Group Health Association, Inc.[1] is in the hands of a medical director, but neglects to state that such employment must be approved by the lay board of trustees (R. 173). Respondent says that the board of trustees of GHA does not exercise any supervision over the professional relation between staff doctors and member patients, but neglects to state that the board of trustees can stop payment of an employee-doctor's salary at any time if they are not satisfied that the doctor sees a sufficient number of patients each day to satisfy them or for any other reason (R. 173).

Formation of the Conspiracy.

Respondent states (Br. 14) that American Medical Association[2] had for many years pursued a policy of opposition to all plans involving group practice on a risk-sharing basis. That this statement is not correct is immediately shown by the footnote on that page which says "at the same session (1934) AMA adopted certain principles to govern the conduct of medical service plans for families with limited means, one principle being that any such plan *should* (respondent inadvertently uses "must") include all legally qualified doctors in the locality, who wish to

[1] Sometimes hereinafter referred to as GHA.

[2] Sometimes hereinafter referred to as AMA.

give service under the conditions established" (R. 1087).

Respondent says that this meant that no plan providing for medical care by a salaried staff could obtain the approval of AMA, but petitioners insist that this principle did not purport to deal with or refer to doctors working on salary. Dr. West testified that in applying this principle each case must be decided on the facts presented (R. 1088). The fact is that there were in excess of 4,000 prepayment and postpayment plans operating throughout the country without the existence of any dispute or controversy with petitioners. The AMA analyzed all types of medical plans in existence in order to help persons to obtain medical service through such plans or with the assistance obtained from Government agencies (R. 224).

Respondent then says (Br. 14) that "the policy (of opposition) was established by its (AMA) House of Delegates". The Principles of Medical Ethics of AMA are a complete answer to those contentions. The Principles provide that "contract practice *per se* is not unethical" and then specifies certain features and conditions, which, if present, make a contract unethical (R. 860). There is nothing in those features or conditions that shows a policy of opposition as claimed by respondent. They show the contrary.

Respondent says (Br. 15) that this alleged policy of opposition to all plans involving group practice on a risk-sharing basis was actively enforced by the Judicial Council of AMA. Petitioners insist that could not be true because the jurisdiction of the Judicial Council is limited to appellate jurisdiction and then only concerns questions of law and procedure (R. 1034). Respondent says (Br. 16) that the Judicial Council repeatedly affirmed the expulsion of doctors because of their participation in such plans. The record shows only three instances from the years 1932 to 1938 and none of them bore the slightest resemblance to GHA. In two of them expulsion was affirmed by the Judi-

cial Council and in one (The Ross-Loos Case) the expulsion was reversed for errors in procedure (R. 1034). The record does not show that the reason for the expulsion in 1932 of certain doctors by the Dallas County (Texas) Medical Society was group practice on a risk-sharing basis. The provisions of the contract of employment in that case are not stated (R. 1031-1032). The basis of the expulsion of certain doctors from the Milwaukee County (Wisconsin) Medical Society in 1936 (R. 255) was stated (R. 256) to be solicitation of patients, advertising and contract practice contrary to sound public policy. But the terms of the contract of employment of doctors which is stated to be contrary to sound public policy is not contained in the record, so it is impossible to determine whether, even in this one isolated instance, the expulsion was because of a policy of opposition to all plans involving group practice on a risk-sharing basis. In fact, Dr. West, Secretary and General Manager of AMA, testified that AMA did not have a policy of opposition to plans involving group practice on a risk-sharing basis (R. 1034).

Respondent says (Br. 15) that much of the critical evidence of the conspiracy of which petitioners were convicted is found in minutes of meetings of the Medical Society of the District of Columbia [3] and its Executive Committee. It must be remembered that much of this hearsay evidence was admitted on the theory that Dr. Conklin, Secretary of DMS, and other persons making statements appearing in those minutes were co-conspirators, but they were found "not guilty", which destroys the basis for the admission of this evidence. Respondent then proceeds to use any and every statement made by a member of DMS or a member or ex-member of any committee of DMS as though such statement had been made by and was binding on DMS. Peti-

[3] Sometimes hereinafter referred to as DMS.

tioners insist that statements made by members of DMS and by members or ex-members of committees, or even by committees, are not binding on DMS. DMS is only bound by resolutions duly passed by a vote of its members or by resolutions passed by committees on subjects that have been duly and finally delegated to them by DMS. The only way voluntary societies like DMS can function is by meetings of its members who should be free to express their views pro and con. To use the statements made by members at such meetings as the basis for charging the Society with a criminal conspiracy is to destroy all society functions and to invade the constitutional right of free speech of the Society and its members.

Respondent (Br. 17) states "The report of this sub-committee, presented at the meeting of the Executive Committee on July 12, 1937 (R. 319-320) stated in part (R. 321):" Then follows excerpts from a letter dated July 12, 1937, from Dr. Verbrycke to Dr. McGovern. Respondent does not specifically state, but it leaves the inference that this letter was adopted by the Executive Committee. The fact is that it was rejected by the Executive Committee and ordered laid on the table (R. 336). Certainly respondent does not state, as we think it should, that the Executive Committee rejected this report and ordered it laid on the table.

Respondent states (B. 22) that in the October 2, 1937, issue of the AMA Journal, an article prepared by Dr. Woodward "denounced" the Group Health plan, and that the article embodies "suggestions" to the District Society of a course of action which might cripple Group Health. The words "denounced" and "suggestions" are unwarranted characterizations. The article truthfully and plainly stated the facts as they existed and performed the proper function of notifying members of the facts concerning GHA.

Respondent says (Br. 23) that on October 6, 1937, DMS adopted a resolution that it cause a copy of the Dr. Woodward article to be sent to each of its members as an indication of its future policies with respect to combatting the activities of GHA. Petitioners point out that the Woodward article does not advocate any combat with GHA. It merely stated the admitted facts and made fair comments thereon.

The publication and circulation of the Dr. Woodward article were but "an exercise of the right of free speech guaranteed by the First Amendment which cannot be made unlawful by act of Congress." *United States* v. *Hutcheson*, 312 U. S. 219, 243 (concurring opinion of Stone, J.)

Operation of the Conspiracy.

A. Boycott of Group Health and Its Staff by District Society and Its Members.

Respondent attempts (Br. 26) to leave the inference that DMS insisted on preferring charges against two members of DMS who were employed by GHA, after they submitted their resignations as members to DMS. The fact is that those two doctors, on November 11, 1937, at the insistence of GHA (R. 197) wrote a letter to the president of DMS (R. 454) withdrawing their resignations. It was not until long after the withdrawal of the resignations, and on November 22, 1937 (R. 455-456-457), that the CC&IM Committee referred the charges of violations of Section 5 of Article IV, and Sections 1 and 2 of Article III of Chapter IX of the Constitution to the Executive Committee for trial, and at the same time so advised the two doctors (R. 457). A full hearing, consisting of several sessions, was had before the Executive Committee, at which the two doc-

tors were represented by the legal staff of Home Owners' Loan Corporation (R. 558-559), and the Executive Committee on March 2, 1938, recommended to the full Society that Dr. Scandiffio be expelled (R. 560-561) and on March 16, 1938, the Society expelled him (R. 561-563) for the stated violations of its constitution.

B. Boycott of Group Health and Its Staff by the Washington Hospitals.

Respondent states (Br. 29) that both AMA and DMS proceeded to bring pressure to bear upon the Washington hospitals to exclude GHA doctors. Petitioners insist there is no such evidence.

Respondent says (Br. 24) that the AMA's action took the form of forcing the hospitals to comply with the "Mundt resolution" of 1934 suggesting that hospitals approved for intern training should be limited in their staffs only to doctors who are AMA affiliates. Petitioners insist that the Mundt resolution merely expressed an opinion by the House of Delegates of the AMA and referred the opinion to the Council on Medical Education and Hospitals to take under advisement (R. 779). Furthermore the uncontradicted evidence is that the AMA had received the request for inspection from Georgetown and Providence Hospitals February 3, 1937, at which time GHA had not even been incorporated, and the uncontradicted evidence is that at the time of the inspection of the hospitals in the summer of 1937 Dr. Peterson, who actually conducted the inspections, had not even heard of GHA (R. 870) and neither had his superior, Dr. Cutter (R. 785).

Respondent states (Br. 31) that one group (of DMS) favored sending a letter to the hospitals informing them of the particular sections of the constitution relating to ap-

proval of contracts and warning them that "if they failed to cooperate in every way that they might not be on the approved list" (R. 402) and that a letter giving effect to this proposal was drafted and approved by the Executive Committee (*ibid.*). Petitioners insist that there is no warrant in the record for this statement. Dr. Hooe (not a group) made a motion before the Executive Committee as to the first letter mentioned (R. 402) and Dr. Sprigg read a prepared letter (R. 402) but Dr. Sprigg's letter is not in the record and whether or not it proposed giving effect to Dr. Hooe's motion does not appear. At any rate neither Dr. Hooe's motion nor Dr. Sprigg's letter was ever approved by the Executive Committee or the Society. Dr. Willson's resolution of November 3, 1937, eliminated both of them.

Respondent (Br. 32) sets out in full Dr. Willson's resolution of November 3, 1937. Far from being part of a conspiracy, the uncontradicted evidence is that this resolution was conceived entirely by Dr. Willson and was submitted by him as a parliamentary procedure to prevent the sending of a letter proposed by Dr. Sprigg, and to have the matter referred to the Hospital Committee, where he believed the matter would end (R. 1270-1271).

Respondent states (Br. 34) that the DMS resolution of December 1, 1937, recommending as a matter of educational policy that, where possible, appointees to the staff of teaching hospitals be a member of DMS or a local medical society in his immediate neighborhood, would, if complied with, bring about the desired boycott of Group Health by the Washington hospitals. Petitioners insist that the recommendation or request contained in the resolution of December 1, 1937, was not evidence of boycott or restraint. A voluntary membership organization has the right to request, peacefully and without violence, exclusive employment rights for its members.

Respondent states (Br. 35) that the chairman of the Hos-

pital Committee of DMS also sent to each hospital a questionnaire requesting information concerning its correspondence with GHA and other information (R. 244, 595-596). That is an incorrect statement. At R. 244 Betty Logsdon testified that those questionnaires were sent to the hospitals but at R. 1360 she corrected her testimony in that regard and said the questionnaires were mailed to the members of the Hospital Committee of DMS and not to the hospitals.

Respondent states (Br. 37) that all of the local hospitals excluded all of GHA doctors because of their connection with that organization. It must be remembered that from January 27, 1938, to July 27, 1938, the petition of GHA for declaratory judgment (R. 640, 1424) against the United States District Attorney and the Superintendent of Insurance was pending in the District Court in which it was alleged that the United States District Attorney and the Superintendent of Insurance contend that GHA was illegally practicing medicine and illegally engaged in the business of insurance. The request of Dr. Selders, GHA surgeon, for hospital privileges was principally involved. The hospitals failed to act on his request or denied it because of the illegality of GHA (R. 496, 601, 602, 603, 619, 636, 640, 1162, 1163, 1205, 1275, 1340, 1347-1348) or because Dr. Selders was not qualified for the broad surgical privileges which he requested (R. 515, 529, 619, 1112, 1162, 1164-1165-1166, 1205, 1273, 1274, 1279, 1302, 1303-1305, 1309-1311, 1316-1318, 1323, 1327-1328, 1332, 1352, 1361-1363). Dr. Selders was from Houston, Texas, and had just completed his residency on July 1, 1937, in a hospital in Worcester, Massachusetts (R. 1277). No doctor in the District had ever been granted the broad surgical privileges requested for Dr. Selders (R. 1273, 1274, 1360-1363). Furthermore, GHA's president testified that a number of GHA's doctors had courtesy privileges at various hospitals during the indictment period (R. 641, 643-645).

Reply to Respondent's Argument.

I.

Respondent says the indictment charged and the proof showed a violation of Section 3 of the Sherman Act. Petitioners say they did not.

Petitioners in their brief logically considered first the question whether any of the activities alleged to have restrained were "trade" and second, whether if "trade", they were restrained. Respondent desires to argue first whether or not they were "restrained" and second, whether or not they were "trade". We will follow respondent's order of argument in this reply.

A. Respondent says any suppression of competition, by means of boycott or otherwise, violates the Sherman Act, irrespective of whether or not market prices are affected. Petitioners say that in order to establish restraint of trade under the Sherman Act it must be charged and proven that the restraint either fixed prices or suppressed competition to the extent that market prices were substantially affected to the injury of the public or competition substantially suppressed.

Respondent states (Br. 12) that petitioners conspired to boycott Group Health in order to prevent it from marketing medical services in competition with petitioner's members, and then argues that that is sufficient to show a violation of the Act. Petitioners insist that the indictment contains no charge whatever concerning, and there is no evidence of, price fixing or suppression of competition. Respondent contends that a combination to exclude a competitor from the market, irrespective of a charge or proof that prices were fixed or competition substantially suppressed to the injury of the public, is sufficient to violate the Act. Respondent insists this Court so held in *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, and *Fashion Guild*

v. *Trade Commission*, 312 U. S. 457. Petitioners insist that this Court did not so hold. Respondent argues that the *Apex* case held that any "*suppression*" of "*competition*" violates the Sherman Act. Petitioners say the *Apex* case did not so hold. The conspirators in the *Apex* case took the Apex Company completely out of the market and completely destroyed all competitive efforts of the Apex Company. Yet in reversing the judgment (based on a jury verdict) against the conspirators this Court held (pp. 500, 501) that contracts, combinations or conspiracies are to be condemned under the Sherman Act *only* when their purpose or effect was to raise or fix the market price or substantially suppress competition to the injury of the public. *Fashion Guild* v. *Trade Commission, supra*, does not support respondent's argument. In that case the Fashion Originators' Guild directly sought to suppress competition of others who copied their designs (of women's garments and the textiles from which they were made) and sold the copies at *lower prices* than the original designs (p. 461). Thus competition was suppressed to the extent that market prices were substantially affected to the injury of the public.

B. Respondent asserts that but one restraint was submitted to the jury, i.e., restraint upon GHA in providing medical care to its members and that was a "restraint of trade." Petitioners say that activity was not trade, and further, four other alleged "restraints," none of which was trade, were submitted to the jury.

Respondent asserts that the activity of GHA in furnishing medical services to its members, which is one of the activities alleged to have been restrained, is commercial in nature and therefore "trade" under the Sherman Act. Petitioners submit that it is nothing of the sort. The furnishing by a corporation through hired employees, of

medical services, when the charges for such services go, not to the doctor employees, but into the corporation treasury, is just as much the practice of medicine as the furnishing of medical services by a doctor to a patient for a fee. Both are the practice of medicine. Both are activities in the learned professions and are therefore outside of the scope of the words "trade and commerce" under the Sherman Act. Respondent refers to Group Health's business of providing medical care in return for the payment of dues. But a doctor in private practice also provides medical care in return for fees, and a doctor who hires other doctors to assist him also provides medical care in return for fees. Could it be said that the doctor who hires doctors to assist him is in "trade" whereas the doctors who assist him are not?

Respondent, apparently realizing and conceding that four of the activities alleged to have been restrained are not "trade" and further that there was no evidence to show they were "restrained" in the sense required by law, undertakes to argue that the issues as to the restraints alleged against members of GHA, GHA's doctors, other doctors and the hospitals are not in issue and that the instructions of the court were really confined to the alleged restraint of the activities of GHA alone. Respondent strains mightily in an attempt to confine the indictment and the charge to conspiracy for the purpose of restraining GHA. But there are five purposes of restraint in the indictment and four of them cannot be blotted out. Even if respondent were not faced with the instructions that restraint on any one of the five activities was sufficient to convict (R. 1505-1508, 1515), it could not avoid the five specific motions of petitioners at the close of the Government's case (R. 728-729) and again at the close of all the evidence (R. 1453-1456) to direct a verdict for petitioners as to each of the five purposes of restraint alleged in the indictment. The court overruled

those motions, thus holding that there was some evidence for the consideration of the jury on each of the five alleged purposes to restrain five specific activities. Petitioners excepted to the denial of those motions (R. 1456) and preserved the points for review (R. 68, 76). But even if that were not so, the court in the instructions which it gave to the jury specifically instructed the jury that each of the five activities, alleged to have been restrained, was "trade" (R. 1505-1508, 1510) and petitioners excepted thereto (R. 1514, 1515), specifically pointing out that such activities were not "trade" (R. 1514, 1515), and preserved such exceptions for review (R. 69, 79). And finally, the court over objection of petitioners (R. 1513) sent the indictment with the jury in its deliberations (R. 1515), and petitioners preserved that for review. So respondent can get no solace from an attempted distortion of the instructions. If any one of the five activities alleged to have been restrained were not "trade" or if there is no evidence tending to show a restraint on any one of those activities "the conviction cannot be upheld". *Stromberg* v. *California*, 283 U. S. 359, 368, *Maryland* v. *Baldwin*, 112 U. S. 490, 493. In the *Stromberg* case, as here, it was impossible to determine whether or not the jury convicted for acts which did not constitute a crime.

Moreover the present contention that the charge concerns the activities of GHA alone is pure afterthought. Petitioners in demurring to the indictment contended that none of the five activities alleged to have been restrained was trade. Respondent contended they were trade. In the District Court and in the court below and in this Court (previous petitions for certiorari) respondent heretofore has contended that the indictment charged a conspiracy to restrain not one, but five activities. The District Court held none of those activities was trade. The Court of Appeals in re-

versing for a trial held all five activities were trade. The case was tried on that theory. The Court of Appeals affirmed the convictions on that theory. Hence we submit respondent's present contention comes a little late and is an attempt to avoid the decisions cited in our brief (p. 32).

Respondent argues (Br. 58) that a non-profit corporation may be engaged in trade. Petitioners agree that a non-profit corporation organized under a statute authorizing incorporation for commercial purposes and engaged in commercial business activities may be in "trade". GHA was organized under a statute providing for the incorporation of charitable, educational and religious associations,[4] was not engaged in commercial activities and petitioners insist a corporation so organized and operating cannot be in "trade".

Respondent insists that this Court did not mean what it said in the *Apex* case when it limited the field of the Sherman Act to commercial activities. It seems significant that in every instance in that opinion, where the nature of field covered by the Sherman Act was discussed, this Court carefully used the clarifying word "commercial". In so holding this Court but followed the many cases which carefully distinguish between "trade" and non-commercial pursuits and activities.

II.

Respondent says petitioners are not within any immunity conferred by Section 20 of the Clayton Act. Petitioners say a dispute concerning terms and conditions of employment of doctors, which was within the Clayton and Norris-La Guardia Acts, was involved, in which petitioners were interested.

It will be noted that respondent avoids reference to the

[4] Act of March 3, 1901, c. 854 (31 Stat. 1283) D. C. Code 1940, Title 29, Sections 29-601 to 29-605 (for the incorporation of charitable, educational and religious associations).

Norris-La Guardia Act. Respondent suggests (Br. 65) that Section 20 of the Clayton Act is confined to any case "between an employer and employees". Of course that is not correct, but if it were, it would be immaterial, considering the Norris-La Guardia Act and *United States* v. *Hutcheson*, 312 U. S. 219. In *Columbia River Co.* v. *Hinton*, 315 U. S. 143, at p. 146 this Court said:

> "We recognize that by the terms of the Statute (Norris-La Guardia Act) there may be a 'labor dispute' where the disputants do not stand in the proximate relation of employer and employee."

Respondent does not seem to argue that no dispute concerning terms and conditions of employment of doctors is involved in this case, or to argue that petitioners were not interested in such a dispute, but ignores that situation and argues that petitioners objected to Group Health's plan of providing medical care. In view of the ten record references in petitioners' brief after certiorari granted (Br. 58, 59, footnote 24) and the seven admissions of respondent in that regard pointed out in that brief (Br. 59, 60, footnote 25) it cannot be successfully denied that a dispute concerning terms and conditions of employment of doctors, which was within the Clayton and Norris-La Guardia Acts, was involved, in which petitioners were directly or indirectly interested. A mere indirect interest is sufficient under Section 13(a) of the Norris-La Guardia Act, 29 U. S. C. 113a.

Respondent makes an ingenious argument that petitioners are a trade association but petitioners insist that, if the practice of medicine be "trade," they are not one whit different so far as their rights under the Clayton and Norris-La Guardia Acts are concerned than a carpenters' union which becomes involved in a dispute with a corporation, a carpenter contractor, which insisted on employing members of the carpenters' union on a monthly

salary basis as distinguished from their established hourly rate. Carpenters sell their services at their established hourly rate on a case-to-case or job-to-job basis. Respondent's theory that petitioners are trade associations is not tenable. Suppose a corporation was formed, with members who required the services of carpenters from time to time, and the corporation hired union carpenters on a monthly salary, who rendered carpenters' services to the members, and the carpenters' union objected and expelled the corporation's carpenters from the union, is it conceivable that the carpenters' union would not be protected by the Clayton and Norris-La Guardia Acts?

In *Columbia River Co.* v. *Hinton*, 315 U. S. 143, cited by respondent, no question concerning terms and conditions of employment was involved. But this Court made it clear in that case that if the dispute involved wages or hours, or terms or conditions of employment, the Clayton and Norris-La Guardia Acts would apply. As heretofore pointed out, it is clear that a dispute concerning terms and conditions of employment of doctors is involved in this case, in which petitioners were interested.

GHA doctors neither charge nor receive fees for their services. The fees (dues) paid by the patient (GHA member) go into the treasury of the corporation. The doctor remains on a salary basis, in the same manner as any other employee of GHA. There is no difference between the corporate device of GHA here involved, and the multitude of cases which have denied corporations the right to sell medical services through a staff of hired doctors.

Notwithstanding the undisputed employment situation, respondent now argues (Br. 72, 73) that the doctors employed by GHA are independent contractors and not employees of GHA. This case was not tried on that theory and petitioners insist that this contention is frivolous in

view of the record here which shows that GHA employed members of petitioners on a salary, full time, to perform GHA's corporate medical work, that such employees had no private practice of their own, worked in offices supplied and furnished by GHA, all under the direction of an employee of GHA (Medical Director) (R. 152, 154, 157, 160, 173, 237, 293, 295, 306, 361, 380-381, 499, 500, 619, 629, 631, 647, 649, 700, 701, 1359). It was the dispute over the terms and conditions of such employment by GHA of members of petitioners that was the matrix of this controversy (R. 290-309, 176-197).

Conclusion.

It is respectfully submitted that the judgments below should be reversed.

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Nos. 201 and 202

In the Supreme Court of the United States

OCTOBER TERM, 1942

AMERICAN MEDICAL ASSOCIATION, A CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA

THE MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA, A CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1942

NOS. 201 AND 202

AMERICAN MEDICAL ASSOCIATION, A CORPORATION
PETITIONER

v.

UNITED STATES OF AMERICA

THE MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA, A CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals for the District of Columbia (R. 1886) is not yet reported. The opinion of the Court of Appeals reversing a judgment sustaining a demurrer to the indictment is reported in 110 F. (2d) 703. The opinion of the

District Court sustaining the demurrer is reported in 28 F. Supp. 752.

JURISDICTION

The judgments of the Court of Appeals were entered on June 15, 1942 (R. 1908–09). The petition for writs of certiorari was filed on July 3, 1942. Jurisdiction of this Court is invoked under section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and as modified by Rule XI of the Rules of Practice and Procedure in Criminal Cases.

QUESTIONS PRESENTED

Petitioners, two medical societies, were engaged in a combination to hinder and obstruct by means of boycotts the operation of Group Health Association, Inc., a non-profit cooperative association of government employees formed in the District of Columbia to provide for the rendition of medical care and hospitalization to its members. The boycotts induced by petitioners consisted of concerted refusals by petitioners' members to serve upon the cooperative's medical staff or to consult with the doctors comprising that staff and concerted refusals by the Washington hospitals to permit the cooperative's doctors to treat its members in those institutions; the boycotts resulted in restraints upon the operation of the cooperative, upon doctors in the pursuit of their callings, and upon the hospitals in the operation of their business. The

principal question presented is whether the combination was "in restraint of trade" within the meaning of section 3 of the Sherman Act.

Other subordinate questions presented are (1) whether the conduct for which petitioners were convicted arose from a dispute concerning terms and conditions of employment within the meaning of section 20 of the Clayton Act so that petitioners were immune from prosecution for such conduct; (2) whether Group Health Association was operating in violation of District of Columbia statutes relating to the practice of medicine and the business of insurance and, if so, whether the violation of these statutes by the cooperative is a material consideration in appraising the lawfulness of petitioners' combination; (3) whether the acquittal of the individual defendants by the jury requires that the verdict against petitioners be set aside; (4) whether certain allegations of the indictment were irrelevant and prejudicial; (5) whether the District Court erred in the admission of evidence; (6) whether the District Court erred in the exclusion of evidence; and, (7) whether the District Court erred in its instructions to the jury.

STATUTES INVOLVED

Section 3 of the Act of July 2, 1890, c. 647, 26 Stat. 209 (U. S. C., title 15, sec. 3), known as the Sherman Act, provides:

> Every contract, combination in form of trust or otherwise, or conspiracy, in re-

straint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is declared illegal. * * *

Section 20 of the Act of October 15, 1914, c. 323, 38 Stat. 738, as amended (U. S. C., title 29, sec. 52), known as the Clayton Act, provides:

No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, * * *

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain

from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

STATEMENT

Petitioners, the American Medical Association and the Medical Society of the District of Columbia, are two incorporated medical associations which, with 21 of their individual officers and members, were tried upon an indictment charging a violation of section 3 of the Sherman Act (R. 1–21, 29–30). The jury convicted the petitioners and acquitted the individual defendants (R. 44–45).

Prior to trial, the District Court sustained a demurrer to the indictment and dismissed it (R. 21–25). *United States* v. *American Medical Association,* 28 F. Supp. 752. The Government appealed to the Court of Appeals and, before the appeal was heard, petitioned this Court for certiorari. The writ was denied. 308 U. S. 599. Thereafter, the

Court of Appeals reversed the judgment of the District Court and remanded the case for trial (R. 26–28). 110 F. (2d) 703. A petition by the defendants for certiorari was denied. 310 U. S. 644.

The indictment (R. 1–21) charged the petitioners with engaging in a combination and conspiracy to hinder and obstruct the operation of a non-profit cooperative association of government employees formed in the District of Columbia to provide for its members medical care through a salaried medical staff and hospital accommodations in the District of Columbia hospitals. It alleged that the combination sought to achieve its object by inducing petitioners' members and the Washington hospitals to boycott the cooperative and the members of its medical staff. The indictment charged that these boycotts resulted in restraints upon the operation of the cooperative, upon doctors in the pursuit of their callings, and upon the hospitals in the operation of their business. When the case was first before the court below, it held that these restraints upon the rendition of medical and hospital services, if proved, were restraints of trade in violation of section 3 of the Sherman Act. *United States* v. *American Medical Association*, 110 F. (2d) 703.

The evidence in the case is voluminous and supports every essential allegation of the indictment. The facts which the jury might have found from the evidence may be summarized as follows:

The American Medical Association [1] is the largest and most influential association in the medical profession, embracing within its membership almost 65 per cent of the doctors in the United States.[2] Affiliated with it are county and state medical associations located throughout the country.[3] The Medical Society of the District of Columbia,[4] with 825 members, is the District of Columbia affiliate of the AMA.[5]

On February 24, 1937, a non-profit cooperative association, called Group Health Association, Inc.,[6] was incorporated in the District of Columbia to provide for the rendition of medical care and hospitalization to members of the Association and their dependents in return for monthly dues from the members.[7] Membership in GHA is limited to civil employees of the executive branches of the United States Government.[8] The medical care which it offers is provided by a group of doctors engaged by GHA and compensated by salary.[9]

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[1] The association will sometimes hereinafter be referred to as the AMA.

[2] R. 112–13; Exs. 1 (R. 90) 3 (R. 113–16). All exhibits cited in this brief are those of the Government.

[3] Ex. 1, R. 91, 1581; R. 1028.

[4] The society will sometimes hereinafter be referred to as the DMS.

[5] Ex. 1, R. 89–91.

[6] Group Health Association will sometimes hereinafter be referred to as GHA.

[7] R. 149–51; Ex. 1, R. 95, 1242.

[8] Ex. 1, R. 1212.

[9] Ex. 37, R. 293.

The plan of GHA to provide medical care on a pre-payment basis through a salaried staff of doctors was condemned by petitioners as being in violation of the Principles of Medical Ethics of the AMA and, therefore, "unethical".[10] Although there is conflict in the record as to the reason for petitioners' opposition, there is abundant evidence to show, and the court below concluded,[11] that it was inspired by a fear that GHA would attract a substantial number of government employees who were actual or potential patients of doctors in private practice in Washington with a resulting reduction in the income of those doctors. A few illustrations of the evidence of this competitive aspect of the case are set forth in the margin.[12]

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[10] Exs. 36 (R. 276–78, 283–90) 37 (R. 319–23, 357–58, 387–90), 177 (R. 317–18), 135 (R. 316–17), 293 (R. 368–86). The Principles of Medical Ethics define certain standards of conduct which all members of petitioners are obliged to observe. Ex. 1 (R. 851–63, 1557); R. 1073–79.

[11] R. 1890–91.

[12] Among the Principles of Medical Ethics is a provision which condemns as "un-professional" the rendition by a physician of services under conditions "which interfere with reasonable competition among the physicians of a community" (R. 860). The DMS declared GHA "unethical" because it violated this provision (Ex. 37, R. 287–88). Another provision condemns "contract practice"—that is, the rendition of medical care to a group of individuals by a doctor on a salary basis—"when there is interference with reasonable competition in a community" (R. 860). The DMS expelled a member on the ground that his contract with GHA violated this provision. (Ex. 37, R. 559–61.)

Frequent warnings were voiced by the individual defendants and others concerning the competitive threat to the

The condemnation of GHA as "unethical" led to the formulation by the petitioners of the plan to force the cooperative out of business for which petitioners were convicted. The plan consisted of (1) action by the DMS forbidding its members to join the medical staff of GHA or to consult with members of the staff, (2) the institution of disciplinary proceedings against DMS members who violated these prohibitions, and (3) the coercion of the Washington hospitals to exclude GHA doctors from the staffs of the hospitals and thus to prevent

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private practice of medicine which GHA offered. The defendant Woodward, in an article in the Journal of the American Medical Association discussing GHA, called attention to the fact that GHA might include approximately three-fourths of the Washington population and stated (Ex. 293, R. 385):

> The effect of the withdrawal from private practice of even one-half that number of persons, all of whom are able to pay for medical services, will materially disturb medical practice in the District of Columbia and react against public interest.

A spokesman for the DMS at a meeting with GHA pointed out that membership in GHA was open to substantially all government employees and said (Ex. 10, R. 194):

> * * * But let us get down to cases and consider what would happen in the District of Columbia provided you were able to obtain the maximum of enrollment in this corporation. As I pointed out a while ago, it would involve about one-third of the population of the District of Columbia. Well, one-sixth anyhow, of actual subscriptions, because there are about 100,000 employees. Multiply that by 3.3, you see what it would do here as an economic thing. * * * It would simply result in the necessary exodus of a

these doctors from treating their GHA patients in the hospitals.

(1) The constitution of the DMS prohibits professional relations by members with any organization not approved by the DMS.[13] On July 12, 1937, shortly after GHA was incorporated, the executive committee of the DMS adopted and circulated among its members a list of approved organizations from which GHA was omitted.[14] There was substantial evidence to show that the list was in fact a "white list" intended to warn petitioners' members against joining the staff of GHA or consulting with the members of its medical staff.[15] Four members of the DMS declined positions on the staff of GHA because of this action

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large part of the medical profession of the District of Columbia. * * *

The defendant McGovern is quoted as follows in the minutes of one of the DMS meetings (Ex. 37, R. 358):

> Dr. McGovern said that he looked upon this Group Health Association movement as an organization coming in and interfering with his business. He added that he expected to be in practice for some 20 years and he did not propose, if it could be avoided at all, to have an organization such as was proposed to interfere with his work and income. "Just what are you fellows going to do about it?"

Other similar excerpts from the record are quoted in the opinion of the court below (R. 1890–93, fn. 23).

[13] Ex. 1, R. 1559.

[14] Ex. 37, R. 331–34.

[15] Exs. 37 (R. 322, 334, 351, 362, 387), 45 (R. 341); R. 1197.

of the DMS;[16] another declined for the same reason to consult with a GHA doctor concerning patients seriously ill with heart disease.[17]

(2) When two members of the DMS joined the staff of GHA, the DMS instituted proceedings to expel them from the DMS and the AMA.[18] The proceedings resulted in the resignation of one of the doctors from the staff of GHA, with a consequent dismissal of the proceedings, and the expulsion of the other doctor from the DMS.[19] Disciplinary proceedings were also instituted by the DMS against a member because of an alleged consultation with a GHA doctor, and the proceedings were dismissed only upon assurances from the member that he would avoid such consultations in the future.[20]

(3) While the greater part of the Government's evidence in the case concerns the action of the petitioners to induce the Washington hospitals to boycott GHA by denying hospital privileges to its staff, the formal proceedings of the DMS sufficiently reveal the action taken and the results achieved in this respect.

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[16] R. 237, 151–52, 1357–58; Ex. 37, R. 408.
[17] R. 951–54; Exs. 458, 459 (R. 544–47).
[18] Exs. 39, 62, 63 (R. 453–56).
[19] Exs. 37 (R. 458–60), 60 (R. 461); R. 653–54, 599–60.
[20] R. 666–69; Exs. 567–569; 37 (R. 672, 678, 680).

On November 3, 1937 the DMS adopted the resolution quoted in the margin,[21] instructing its hospital committee to recommend a plan for preventing patients of GHA from being received in the Washington hospitals.[22] Upon the recommendation of the hospital committee the DMS adopted and sent to all of the hospitals a resolution recommending to the hospitals that they require that all members of their staffs be members of the DMS

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[21] "WHEREAS, The Medical Society of the District of Columbia has an apparent means of hindering the successful operation of Group Health Association, Inc., if it can prevent patients of physicians in its employ being received in the local private hospitals; and

WHEREAS, The Medical Society of the District of Columbia has no direct control over the policies of such hospitals as determined by their lay boards of directors, except through its control of its own members serving on their medical staffs; and

WHEREAS, Conflicts between the Medical Society of the District of Columbia and any local hospitals arising from an attempt to enforce the provisions of Chapter IX, Article IV, Section 5, of its Constitution should be assiduously avoided, if possible, because of the unfavorable publicity that would accrue to its own members; therefore, be it

RESOLVED, That the Hospital Committee be, and is hereby, directed to give careful study and consideration to all phases of this subject and report back to the Society, at the earliest practicable date, its recommendations as to the best way of bringing this question to the attention of the medical boards and boards of directors of the various local hospitals in such a manner as to insure the maximum amount of practical accomplishment with the minimum amount of friction and conflict.

[22] Ex. 37, R. 422-23.

and the AMA.[23] Shortly thereafter the hospital committee reported as follows:[24]

> On February 2, 1938 the Medical Society adopted a resolution requesting, at the next stated meeting, the facts relating to the present status of Group Health physicians at the various Washington hospitals, preliminary to appropriate disciplinary action in event any hospital had ignored the Medical Society's wishes in the premises.
>
> This resolution was referred to the Executive Committee and in turn to the Hospital Committee.
>
> The Hospital Committee reports that, at this time, the majority of local private hospitals contain in their by-laws a provision that a physician in order to practice in the hospital must be a member or qualified for membership in his or her local Medical Society
>
> Only three of the local hospitals (Columbia, Sibley and George Washington) have not followed this recommendation of the American Medical Association.
>
> All of the local private hospitals are cooperating fully with the Medical Society in respect to Group Health Association, Inc. At the present time only one of the local hospitals has on its staff list the name of a physician connected with Group Health Association, Inc. This hospital does not re-

[23] Exs. 37 (R. 459), 495 (R. 608), 506 (R. 605), 498 (R. 599–600), 617 (R. 727); R. 1342.

[24] Exs. 324 (R. 556–58), 37 (R. 565–67).

vise its staff list annually, as do the other hospitals, but it has assured the Chairman of the Hospital Committee that steps have been taken to deny this physician hospital privileges.

The Hospital Committee urges that the Medical Society continue their full cooperation and avoid conflict with any of the local private hospitals.

The action of the DMS described in the foregoing discussion was undertaken with the knowledge and approval of the AMA. The AMA was in a large measure responsible for shaping the hostile policy of its local affiliate toward GHA which led to the boycotts;[25] through its Journal it warned the profession that doctors associated with GHA were "certain to lose professional status" which would handicap the organization in obtaining "consultant service and hospital accommodations";[26] and it was kept fully advised of the steps taken by the DMS to prevent professional relations between petitioners' members and GHA and to exclude GHA doctors from the Washington hospitals.[27]

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[25] R. 152, 890–91; Exs. 106 (R. 315–16), 177 (R. 317–18), 135 (R. 316–17), 293 (R. 368–86).

[26] Ex. 293 (R. 368, 385).

[27] R. 326, 891–93, 903, 908, 922, 938, 963–64, 1029–30; Exs. 136 (R. 436), 37 (R. 327, 345–46, 441, 445–49, 567); 45 (R. 341), 110, 111 (R. 401); 117 (R. 427, 434–35), 147 (R. 563–64), 186 (R. 352–53), 187 (R. 353–54), 188 (R. 354), 190 (R. 359), 198 (R. 318–19), 199 (R. 319), 201 (R. 342), 203, 114 (R. 410), 192 (R. 900), 292 (R. 326).

There was also substantial evidence warranting the inference that the AMA was directly instrumental in obtaining the exclusion of the GHA doctors from the Washington hospitals.[28]

Upon the facts recited above, the District Court charged the jury that it might convict the defendants if it found that they had engaged in the combination charged by the indictment (R. 1507–08). On appeal, the Court of Appeals reaffirmed its first holding that the combination was "in restraint of trade" (R. 1886–93) and held that no error was committed either in the trial of petitioners or in the rulings upon their post-verdict motions (R. 1894–1907).

ARGUMENT

I

The Government appealed from the decision sustaining the demurrer to the indictment, and prior to argument in the Court of Appeals petitioned for certiorari on the ground that the importance of the question whether the combination alleged was in restraint of trade warranted direct review by this Court similar to that which would have been available as a matter of right under the Criminal Appeals Act had the case originated outside the Dis-

[28] Exs. 215, 243 (R. 273–74), 223 (R. 274–75), 227, 228 (R. 275–76), 236 (R. 265–66), 237 (R. 268), 238 (R. 269), 239 (R. 270), 241 (R. 271–72), 242 (R. 272–73); R. 784–85, 838–39.

trict of Columbia. *United States* v. *American Medical Association*, October Term, 1939, No. 377, Pet. pp. 9–12. Certiorari was denied. 308 U. S. 599. After the Court of Appeals reversed the decision of the District Court, the defendants petitioned for certiorari and the Government opposed on the grounds both that the judgment was not final and that the holding of the Court of Appeals did no more than give application to settled doctrines. *American Medical Association* v. *United States*, October Term, 1939, No. 959, Brief for the United States in Opposition, pp. 11–15. Again certiorari was denied. 310 U. S. 644. In view of these two denials of certiorari, together with the fact that the decision is probably limited in effect to the District of Columbia, that the question has received comprehensive treatment by the Court of Appeals, and that the decision appears to be clearly correct, the Government does not feel warranted in acquiescing in the granting of the writ.

1. Petitioners contend (Pet. 19) that the Court of Appeals did not give proper effect to applicable decisions of this Court in holding that the phrase "restraint of trade" in section 3 of the Sherman Act embraces restraints upon the rendition of medical services. The Government submits that the cases cited by petitioners do not lend any support to this contention. Only *Atlantic Cleaners & Dyers, Inc.* v. *United States*, 286 U. S. 427, and *Apex*

Hosiery Co. v. *Leader*, 310 U. S. 469, seem sufficiently relevant to require comment.[29]

The *Cleaners & Dyers* case held that the "restraint of trade" forbidden by section 3 of the Sherman Act is not, so far as it relates to activities in the District of Columbia, confined to restraints upon the buying and selling of commodities, but includes restraints upon the performance of services, such as dyeing, cleaning, or renovating wearing apparel. The Court supported this conclusion by a quotation from the opinion in *The Schooner Nymph*, 18 Fed. Cas. 506, rendered by Mr. Justice Story while sitting as a circuit justice. Petitioners rely upon the portion of one sentence in this quotation in which Mr. Justice Story intimated that the practice of the learned professions was not a "trade". This statement was not pertinent to any question considered in the *Cleaners & Dyers* case, and it was *dictum* only in *The Schooner Nymph*.

Petitioners' assertion (Pet. 20) that the decision of the Court of Appeals is inconsistent with *Apex*

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[29] The other cases cited (aside from *Federal Baseball Club* v. *National League*, 259 U. S. 200) did not arise under the Sherman Act. They construed the terms of other federal statutes, state legislation, or private contract. The *Baseball* case turned on the meaning of the term "commerce" as used in sections 1 and 2 of the Sherman Act. The scope of section 3 of the act is not governed by the scope of sections 1 and 2; this Court has held that section 3 is to be interpreted "as though it were a separate and independent act", disassociated from the prior sections. *Atlantic Cleaners & Dyers, Inc.* v. *United States*, 286 U. S. 427, 435.

Hosiery Co. v. *Leader, supra,*[30] is based on the argument that the Court in that case construed the Sherman Act as applying only to combinations which are intended to or in fact do affect market prices. Substantially the same argument was made in *General Motors Corporation* v. *United States,* No. 352, October Term, 1941, Petition, pp. 16–22. Certiorari was denied. 314 U. S. 618. The argument does violence to the opinion of the Court in the *Apex* case,[31] ignores the holding in the later case of *Fashion Originators' Guild* v. *Federal Trade Commission,* 312 U. S. 457, 466, that the regulating of prices and the limiting of production do "not exhaust the types of conduct banned by the Sherman and Clayton Acts", and seeks to give an interpretation to the *Apex* case in conflict with the

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[30] In that case, plaintiff, a hosiery manufacturer, charged that the defendant union and its officers had violated the Sherman Act by engaging in a sit-down strike for the purpose of enforcing a demand for a closed shop and by preventing the interstate shipment of goods already manufactured. Upon these facts, the Court held that the unlawful interference by combination and conspiracy with the movement of goods across state lines was not without more a violation of the statute.

[31] The Court expressly stated that the act applies to "restraints * * * which tended to restrict production, raise prices or otherwise control the market to the detriment of purchasers or consumers of goods and services." [310 U. S. at 493.] The opinion further stated that the Act is applicable where the "restraint is shown to have or is intended to have an effect upon prices in the market or otherwise to deprive purchasers or consumers of the advantages which they derive from free competition." [310 U. S. at 501.]

line of cases in which the Court has held, without consideration of the effect upon the price structure, that combinations to boycott competitors are in violation of the Sherman Act.[32]

The Government submits that the element of "commercial competition" which the Court found lacking in the *Apex* case is plainly present in the case at bar. In the *Apex* case the Court concluded that the combination "did not have as its purpose restraint upon competition in the market for petitioner's product", that its object was solely to compel the company to accede to the union demands for a closed shop (310 U. S. at 501). Here, as the Statement has indicated (*supra*, pages 8–10), the dominating purpose of petitioners was to suppress the competition of GHA in the market for medical services. And the verdict of the jury necessarily constitutes a finding to this effect, since the Court instructed the jury that to convict the defendants it must find that they "intended to prevent Group Health Association from competing with doctors engaged in private practice on a fee-for-service basis * * *": (R. 1498, R. 1509).[33]

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[32] *Montague & Co. v. Lowry*, 193 U. S. 38; *Loewe* v. *Lawlor*, 208 U. S. 274; *Eastern States Lumber Dealers' Association* v. *United States*, 234 U. S. 600; *Binderup* v. *Pathe Exchange, Inc.*, 263 U. S. 291; *Paramount Famous Lasky Corp.* v. *United States*, 282 U. S. 30; *United States* v. *First National Pictures, Inc.*, 282 U. S. 44; *Fashion Originators' Guild* v. *Federal Trade Commission*, *supra*.

[33] For the same reasons the decision does not conflict with *United States* v. *Gold*, 115 F. (2d) 236 (C. C. A. 2); *Gunder-*

The holding below, even though not directly governed by any prior decision of this Court, does no more than give application to doctrines now settled. Those doctrines are: (1) Section 3 of the Sherman Act is not to be given a narrow construction; Congress in enacting this section "meant to deal comprehensively and effectively with the evils resulting from contracts, combinations and conspiracies in restraint of trade."[34] (2) The phrase "restraint of trade," as used in the Sherman Act, had its genesis in the common law, and its use at common law is the general measure of its scope.[35] (3) The courts both of this country and of England have held, for almost a century and a half, that restraints upon the rendition of medical services are embraced within the restraints of trade condemned by the common law.[36]

2. Petitioners also urge (Pet. 20) that the question decided by the Court of Appeals is one of substance relating to the construction of a statute of

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sheimer's, Inc. v. *Bakery and Confectionery Workers' International Union*, 119 F. (2d) 205 (App. D. C.); *International Ladies' Garment Workers' Union* v. *Donnelly Garment Co.*, 119 F. (2d) 892 (C. C. A. 8); or *United States* v. *Local 807*, 118 F. (2d) 684 (C. C. A. 2).

[34] *Atlantic Cleaners & Dyers, Inc.*, v. *United States*, 286 U. S. 427, 435.

[35] *Standard Oil Co.* v. *United States*, 221 U. S. 1, 51, 59; *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 494–498. For additional authorities see *United States* v. *American Medical Association*, 110 F. (2d) 703, 707–708.

[36] See the authorities cited in *United States* v. *American Medical Association*, 110 F. (2d) 703, 709–711.

the United States. But the court has construed only section 3 of the Sherman Act and only in so far as that section relates to activities wholly within the District of Columbia. See *Ex parte Bakelite Corp.*, 279 U. S. 438, 450. The decision below is therefore the equivalent of the construction of a statute limited in its operation to the District of Columbia, which this Court will not ordinarily review. *Del Vecchio* v. *Bowers*, 296 U. S. 280, 285.

It is unlikely that the holding of the Court of Appeals that restraints upon the practice of medicine fall within the meaning of the words "restraint of trade" in section 3 will influence the enforcement of the Sherman Act beyond the District of Columbia. Section 1, which also prohibits combinations "in restraint of trade", is limited in its application to restraints affecting *interstate* trade and commerce. Since the practice of medicine is usually an *intrastate* activity, it is not likely that section 1 could be invoked against restraints upon the practice of medicine in the states.

The Government recognizes, however, that the decision below may have persuasive effect outside of the District of Columbia and involves important interests. If certiorari should be granted, it is respectfully urged that the grant be limited to the question whether the conspiracy of which petitioners were convicted constitutes a conspiracy in restraint of trade within the meaning of section 3 of the Sherman Act.

II

None of the subordinate questions raised by petitioners appears to be an appropriate subject for review by this Court. They involve rulings of the District Court which either are in accord with settled principles or are unlikely to have general application; their correctness depends largely upon an appraisal of the evidence, which this Court will not ordinarily undertake. *Houston Oil Co.* v. *Goodrich*, 245 U. S. 441. In any event, the opinion of the Court of Appeals clearly shows that the rulings were correct.

We do not believe that petitioners' attack on the rulings concerning admissibility of evidence and on the instructions to the jury and petitioners' claim that the indictment contains prejudicial and irrelevant matter require any discussion beyond the comments made in the margin.[37] Discussion of the other subordinate questions follows:

1. Petitioners contend (Pet. 21) that the holding of the court below that section 20 of the Clayton

[37] The only objection to the admission of evidence which the court below considered worthy of comment is that addressed to the evidence of conduct by the AMA in other parts of the country similar to that in the District of Columbia. This evidence was received only to show the plan and purpose of the AMA in the commission of the illegal acts charged by the indictment. The opinion of the Court of Appeals (R. 1903–06) and the numerous authorities upon which the court relies seem to leave no doubt about the soundness of the District Court's ruling admitting this evidence. The exclusion of evidence offered by petitioners (intended to show the illegal-

Act is inapplicable here conflicts with *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U. S. 552; *Milk Wagon Drivers' Union, Local No. 753* v. *Lake Valley Farm Products, Inc.*, 311 U. S. 91; and *United States* v. *Hutcheson*, 312 U. S. 219. These cases are obviously not in point on the issue posed by petitioners. That issue is whether section 20 applies to disputes over the way in which doctors shall provide medical care in a community as well as to disputes concerning the terms and conditions of employment of laborers. None of the cases cited sheds any light on this issue since the Court had before it in each case a dispute arising out of the relations between employers and laborers, and neither the questions decided [38] nor the language

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ity of GHA's activities and the reasonableness of petitioners' combination) is directly sustained by the decision of this Court in *Fashion Originators' Guild* v. *Federal Trade Commission*, 312 U. S. 457, 468. Petitioners' objections to the court's charge to the jury upon the major issues in the case are answered by the discussion of these issues in the text of this brief in opposition (see pages 16–20, 22–26). Petitioners' other objections to the charge are, we submit, frivolous. The opinion of the court below sustaining the validity of the indictment plainly shows that the claim that the indictment contains prejudicial and irrelevant matter is without merit. *United States* v. *American Medical Association*, 110 F. (2d) 703, 715–716.

[38] *New Negro Alliance* v. *Sanitary Grocery Co.*, *supra*, held that discrimination in employment by reason of race or color concerned "terms or conditions of employment" within the meaning of the Norris-LaGuardia Act. In *Milk Wagon Drivers' Union* v. *Lake Valley Co.*, *supra*, the Court held that picketing by a union to compel so-called "vendors", who pur-

of the opinions indicates that section 20 has application to any other kind of dispute.[39]

The decision below is clearly correct and does not call for further review by this Court. Both the language of section 20 and its legislative history (portions of which are set forth in the opinion of the court below, R. 1894-95) show that it was intended to permit collective action of certain kinds by employees in order to offset the superior bargaining position of employers. Doctors, even though engaged by cooperatives on a salary basis, are not employees of the kind which the act was intended to protect; their independence of judgment and their freedom from supervision by those whom they serve cast them more in the role of independent contractors. Accordingly, the application of section 20 does not extend to disputes such as that giving rise to the present case. Cf. *Columbia River Packers Association* v. *Hinton*, 315 U. S.

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chase milk from dairies and sell and deliver it to retailers and others, to join the union fell within the protection of the Norris-LaGuardia Act. *United States* v. *Hutcheson*, *supra*, held that the parties to the dispute concerning terms and conditions of employment need not stand in the proximate relation of employer and employee.

[39] For the same reasons the decision of the court below is not in conflict with *Gundersheimer's, Inc.* v. *Bakery and Confectionery Workers' International Union*, *supra*, p. 206; *International Ladies' Garment Workers' Union* v. *Donnelly Garment Co.*, *supra*, p. 898; or *International Association of Bridge, Structural & Ornamental Iron Workers* v. *Pauly Jail Bldg. Co.*, 118 F. (2d) 615, 620 (C. C. A. 8).

143. Further, there is no reason of policy in favor of extending the provisions of section 20 to the present case, where there are absent the circumstances of inequality of bargaining power which underlay the Clayton Act's passage.

2. In *Jordan* v. *Group Health Association*, 107 F. (2d) 239, the Court of Appeals held that GHA was not operating in violation of District of Columbia insurance laws.[40] In *United States* v. *American Medical Association*, 110 F. (2d) 703, 714, the Court of Appeals, in passing upon the sufficiency of the indictment, held that GHA was not engaged in the practice of medicine in violation of the Healing Arts Practice Act of the District of Columbia.[41] Petitioners urge (Pet. 21-22) this Court in the present case to consider the correctness of these holdings, with a view to deciding that the activities of GHA were illegal, and that this is a material consideration in appraising the unlawfulness of petitioners' combination.

The statutes involved are obviously limited in their operation to the District of Columbia. Accordingly, the present case is not one for certiorari on the issue of violations of law by GHA, where the review would be only of correctness of the construction given the District of Columbia medical practice and insurance statutes by the Court of Appeals. *Del Vecchio* v. *Bowers*, *supra*, at 285.

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[40] D. C. Code, 1940, Title 35, sec. 202.

[41] D. C. Code, 1940, Title 2, sec. 102.

In any event, the holding of the court below that the combination was in violation of the Sherman Act irrespective of the legality of the operations of GHA is in full accord with decisions of this Court. The combination had for its object the suppression of the competition of GHA through the instrumentality of boycotts employed against the organization and its medical staff. This Court has consistently held that such a combination cannot be justified by a showing that it was intended to eliminate unfair or fraudulent practices, or that the competition which it sought to suppress was the product of unlawful conduct. *Fashion Originators' Guild* v. *Federal Trade Commission*, 312 U. S. 457, 468; *United States* v. *First National Pictures, Inc.*, 282 U. S. 44; *Eastern States Lumber Dealers' Association* v. *United States*, 234 U. S. 600.

3. Contrary to petitioners' claim (Pet. 22–23), the decision of the Court of Appeals that the verdict against petitioners might stand despite the acquittal of the individual defendants is in agreement with the only relevant decisions of circuit courts of appeals. The Seventh Circuit reached the same conclusion as the court below upon facts identical with those here involved. *General Motors Corp.* v. *United States*, 121 F. (2d) 376, 411, certiorari denied, 314 U. S 618. In *United States* v. *Austin-Bagley Corp.*, 31 F. (2d) 229, 233, the Second Circuit sustained a verdict convicting certain

defendants which was inconsistent with a verdict acquitting other defendants. Certiorari was denied. 279 U. S. 863. See Petition, *Austin-Bagley Corp* v. *United States*, No. 820, October Term, 1928, pp. 6–7.[42]

The ruling of the court below is also in harmony with the applicable decisions of this Court. *Dunn* v. *United States*, 284 U. S. 390, and *Borum* v. *United States*, 284 U. S. 596, hold that a verdict of conviction upon one count of an indictment may stand although it is inconsistent with a verdict of acquittal upon another count. We submit that no distinction should be made between inconsistent verdicts upon one count of an indictment and inconsistent verdicts upon two counts of the same indictment. The holding of the Court of Appeals, therefore, accords with the principle of the *Dunn* case that "consistency in the verdict is not necessary." *Dunn* v. *United States*, *supra*, at 393.

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[42] The line of cases in the federal courts relied upon by petitioners here (Pet. 41, fn. 26) holding or intimating that the acquittal of one of two defendants indicted and tried for conspiracy requires that the conviction of the other be set aside is inapplicable in the present case since two of the defendants were convicted. The state cases cited (Pet. 41, fn. 27), holding that a verdict returned against a principal for a tort committed by his agent must be set aside if the agent is acquitted, recognize that this principle is confined to cases where the act of the agent is unauthorized by the principal and the latter's liability is predicated only upon the doctrine of respondeat superior. In this case, as the Statement shows (*supra*, pages 8–15), the combination was formed and carried out pursuant to formal corporate action of the petitioners.

CONCLUSION

The decision below is correct and presents no conflict with decisions of this Court or of circuit courts of appeals. It is therefore respectfully submitted that the petition for writs of certiorari should be denied.

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Nos. 201 and 202

In the Supreme Court of the United States

OCTOBER TERM, 1942

AMERICAN MEDICAL ASSOCIATION, PETITIONER

v.

UNITED STATES OF AMERICA

THE MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 201

AMERICAN MEDICAL ASSOCIATION, PETITIONER

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THE MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the district court sustaining a demurrer to the indictment is reported in 28 F. Supp. 752 and the opinion of the Court of Appeals for the District of Columbia reversing the judg-

ment sustaining the demurrer is reported in 110 F. (2d) 703. The opinion of the court of appeals (R. 1886–1907) affirming the judgments of conviction entered against petitioners after jury trial is reported in 130 F. (2d) 233.

JURISDICTION

The judgments of the court of appeals were entered on June 15, 1942 (R. 1908–9). Petition for writs of certiorari was filed on July 3, 1942, and was granted on October 12, 1942. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and as modified by Rule XI of the Rules of Practice and Procedure in Criminal Cases.

QUESTIONS PRESENTED

This Court granted certiorari limited to the first three questions presented in the petition for writs of certiorari. Since the second question thus presented includes and comprehends the first, the questions presented may be stated as follows:

(1) Whether the indictment charged and the evidence proved a conspiracy in "restraint of trade" within the meaning of Section 3 of the Sherman Act.

(2) Whether the acts for which petitioners were convicted are given immunity by Section 20 of the Clayton Act.

STATUTES INVOLVED

Section 3 of the Act of July 2, 1890, c. 647, 26 Stat. 209, 15 U. S. C. Sec. 3, known as the Sherman Act, provides in part:

> Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is declared illegal. * * *

Section 20 of the Act of October 15, 1914, c. 323, 38 Stat. 738, 29 U. S. C. Sec. 52, known as the Clayton Act, provides:

> No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such

property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

STATEMENT

The indictment in this case was returned in December 1938 (R. 1). The district court sustained

a demurrer to the indictment and, on appeal, the court of appeals reversed this judgment (R. 24–25, 27).[1] The two petitioners and 22 other defendants were then brought to trial (R. 29–30). Directed verdicts of acquittal were entered in favor of four of the defendants (R. 38), and at the close of the trial the jury convicted petitioner American Medical Association (sometimes referred to herein as AMA) and petitioner The Medical Society of the District of Columbia (sometimes referred to herein as the Society or as the District Society) and acquitted the remaining 18 individual defendants (R. 44–45).[2] The Court of Appeals affirmed the judgments of conviction (R. 1908–9).

THE INDICTMENT

The indictment under which petitioners were convicted charges a combination and conspiracy in restraint of trade in the District of Columbia, in violation of Section 3 of the Sherman Act. The facts set forth in the indictment may be summarized as follows:

Group Health Association, Inc., was incorporated in the District of Columbia in February 1937

[1] The Government, prior to hearing on its appeal, petitioned this Court for certiorari. Certiorari was denied. 308 U. S. 529. After decision by the court of appeals, the defendants filed a petition for writ of certiorari. Certiorari was again denied. 310 U. S. 644.

[2] The district court imposed a fine of $2,500 on AMA and a fine of $1,500 on the District Society (R. 54–55).

as a nonprofit cooperative association of employees of the Federal Government. This organization (hereinafter referred to as Group Health) provides medical care and hospitalization for its members and their dependents in return for monthly dues from the members. The medical care which it offers is furnished by a staff of doctors who are under the direction of a medical director and are compensated by salary. Group Health has a modern clinic and it defrays, within limits, expenses of hospitalization of members and their dependents (R. 14):

The defendants, during the years 1937 and 1938, have combined and conspired to restrain Group Health in its business of providing medical care and hospitalization, to restrain the doctors on its staff, as well as other doctors, in the pursuit of their callings, and to restrain Washington hospitals in the operation of their business (R. 14–15). The plan and purpose of the defendants were to prevent Group Health from procuring qualified doctors for its staff and to prevent it from obtaining hospital facilities for its members, and to prevent Group Health doctors from consulting with other doctors and from treating their patients in Washington hospitals (R. 16–18). To achieve these objectives, the District Society and AMA induced and coerced their members to boycott Group Health by refusing to serve on its staff or to consult with doctors on its staff, and induced and coerced all the hospitals in the District of Columbia not operated by the Government to boycott Group Health by denying

hospital privileges to doctors serving on its staff (R. 17–19).

By way of "background," the indictment alleges that AMA has long been opposed to the group practice of medicine on a risk-sharing, prepayment basis—the basis upon which Group Health provided medical care—and that this opposition has been principally for economic reasons and because AMA fears the competition which this kind of practice offers to its doctor members, who practice on the customary fee-for-service basis (R. 5, 7). It is further alleged that such group practice has developed in an effort to meet the problem created by the increasing cost of medical care and by the fact that persons of low income have not been able to obtain adequate care under the traditional methods of medical practice (R. 5–6).

AMERICAN MEDICAL ASSOCIATION

AMA, an Illinois corporation, is a federacy of "constituent" state and territorial medical associations (Gov. Ex. 1,[2] R. 1581). Its membership

[2] Exhibit 1 is a stipulation as to certain facts, to which are attached, among other things, the constitution and bylaws of AMA (R. 1535, 1581–98).

A large part of the evidence in this case consists of exhibits which were read to the jury and these exhibits appear in Volumes I and II of the record at the respective points in the trial proceedings at which they were read to the jury. Exhibits admitted in evidence but not read to the jury are included in Volume III.

In this brief, when referring to evidence introduced in the form of an exhibit, we shall, as a matter of conveh-

consists of the members of the constituent associations (R. 1583). A doctor, to be a member of AMA, must therefore be a member of a constituent association.[4]

AMA is the largest and most influential medical association in this country (R. 112). On April 1, 1938, AMA had 109,435 members out of a total of 169,628 doctors in the United States (R. 1536) and many of the doctors who were not members of AMA were not in active practice (R. 180).[5] It publishes a weekly journal called the Journal of the American Medical Association which has a circulation of over 100,000 (R. 1102–3).

The governing body of AMA is the House of Delegates, composed of delegates elected by the constituent associations (R. 1028, 1582). The House elects a board of trustees and also elects certain councils or bureaus which carry on a great deal of the important work of AMA (R. 113). Among these are the Judicial Council, the Council on Medical Education and Hospitals, and the Bureau of Medical Economics (R. 113, 1589).

AMA has adopted certain Principles of Medical Ethics which embody AMA's rules governing the

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ience, ordinarily limit the citation to the appropriate page or pages of the record, without citing the exhibit-number.

[4] County medical societies chartered by constituent associations are known as component societies and membership in a constituent association can ordinarily be obtained only through a component society (R. 1537, 1581).

[5] In each of the years 1936 and 1937 its gross income was over $1,500,000 (R. 114).

relationship between the doctor and his patients, the profession and the public.[6] Every constituent association, with one exception, has adopted these Principles and they are therefore binding upon practically every AMA member (R. 1073–4).

Article VI of Chapter III of the Principles deals with the subject of "Compensation." Under Section 2 of this article it is "unprofessional" for a physician to dispose of his services under conditions "which interfere with reasonable competition among the physicians of a community." Section 3, which defines "contract practice" as meaning an agreement to furnish medical services to a group of individuals on the basis of a fee schedule, or for a salary, states that while contract practice is not "per se" unethical, it becomes "unethical," *inter alia*, when there is "solicitation" of patients, when there is "underbidding" to secure the contract, when the compensation is "inadequate" to assure good medical service, when "there is interference with reasonable competition in a community," and when "the contract because of any of its provisions or practical results is contrary to sound public policy" (R. 860).[7]

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[6] The Principles were read in full to the jury (R. 851–863).

[7] The above rules are clearly not related to ethics in the true sense of that word but are primarily concerned with the competitive aspects of medical practice. The House of Delegates has itself recognized the economic implications of many of the Principles (Gov. Ex. 607, R. 1821, 1823, 1827). In addition, the indefiniteness of these rules gives to the Judicial Council, which passes upon controversies growing

The Council on Medical Education and Hospitals inspects and approves hospitals for interne training (R. 776–777). The standards formulated by the Council are known as "essentials" and hospitals are examined to see whether they conform to them (*ibid.*). To be on AMA's approved list is "extremely important to a hospital"; this enhances the hospital's prestige and enables it to obtain internes whom it otherwise ordinarily could not procure (R. 214).

One of the "essentials" established by AMA for approval of a hospital is that the staff be composed of "ethical" physicians (Def. Ex. 12, R. 777).* The power of AMA to exercise influence over the composition of the staffs of hospitals was implemented and increased by the "Mundt resolution," adopted by the House of Delegates in 1934, which expresses the "opinion" that physicians on the staffs of hospitals approved by AMA for interne training "should be limited to members in good

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out of alleged violations (R. 1530–1), wide latitude to apply the Principles. AMA has never defined what is meant by the phrase "contrary to sound public policy" and it took no action when a definition was requested (R. 866). The Judicial Council has ruled that it is a fundamental of medical ethics that "anything which in effect is opposed to the ultimate good of the people at large is against sound public policy and therefore unethical" (R. 1032).

* Petitioners did not print this exhibit but, by stipulation, either party may refer in brief or argument to any exhibit which was received in evidence (R. 1882). The requirement that staff members be "ethical" appears in Par. 1, Sec. 2, of Def. Ex. 12.

standing of their local county medical societies" (R. 250). It follows, therefore, that AMA may withhold approval of a hospital solely because some members of its staff are not, in AMA's opinion, "ethical" or because they are not members in good standing of their local medical society.

The Bureau of Medical Economics prepares for publication and distributes "data pertaining to the economics of the practice of medicine"; it also furnishes "critical and constructive information and opinions" on this subject (R. 120–121). The bureau has investigated and reported upon numerous plans involving contract or group practice and it has carried on extensive correspondence with members of AMA and others concerning such plans (R. 224–225). Articles written by the Bureau are published in the Journal of the American Medical Association in a section entitled "Organization Section" (R. 117).

THE MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA

The District Society is a constituent association of AMA and the Principles of Medical Ethics of AMA are, by the terms of its constitution, "binding upon" its members (R. 1547, 1557).[9] An Executive Committee exercises "general oversight" over the affairs of the Society (R. 1552); this committee passes upon any charge of unethi-

[9] The Society's constitution and by-laws are a part of Gov. Ex. 1 (R. 1536, 1546–64).

cal conduct preferred against a member and recommends disciplinary action to the Society (R. 1560).

Section 5 of Article IV, Chapter IX of the Society's constitution provides that no member shall be professionally associated with "any" organization or individual engaged in medical practice in the District of Columbia or within 10 miles thereof "which has not been approved by the Society" (R. 1559). Under an amendment adopted in March 1937 the Executive Committee is authorized and directed to prepare a list of "approved" organizations and individuals (R. 1129–30, 1560).

A Compensation, Contract and Industrial Medicine Committee (referred to herein as the CC&IM Committee) has the duty of investigating all charges of unethical conduct relating to "contract practice" brought against any member and the constitution requires every member, before entering into an agreement for rendering professional service, to submit a copy thereof to this committee "for approval" (R. 1553, 1558).[10]

A Hospital Committee of 11 members is required to investigate the "ethical relations" between hospitals in the District of Columbia and physicians, to recommend "a list of hospitals to be approved

[10] The Society's constitution declares that it is "unprofessional" for a physician to dispose of his services under conditions "which interfere with reasonable competition among the physicians" of the community and members are prohibited from entering into any contract, the terms of which are "in violation of" this principle (R. 1558).

by the Society," and to inform the Society of the names of members who are associated in any way with hospitals not on the "approved list" (R. 1554). The constitution provides that members shall not serve upon the medical staff of any hospital "which is not approved by the Society" (R. 1559).

GROUP HEALTH ASSOCIATION, INC.

In 1936 Raymond R. Zimmerman, director of personnel of Home Owners' Loan Corporation (referred to herein as HOLC) became interested in providing a medical service plan for its employees.[11] After studying the cost of the sick leave of employees and familiarizing himself with the operation of various plans for group medical care, he recommended the adoption of such a plan for HOLC employees (R. 149–151). The result was the incorporation of Group Health in February 1937.

When Group Health began operations by opening its clinic on November 1, 1937, it had approximately 900 members,[12] all HOLC employees, but later, after its membership had been thrown open to civil employees of other Government agencies,

[11] Home Owners' Loan Corporation is an independent instrumentality of the United States created to refinance home loans (R. 150). The Act of June 13, 1933, c. 64, 48 Stat. 128, 12 U. S. C. Sec. 1461, *et seq.*, authorized the Federal Home Loan Bank Board to create the Corporation, which was to be operated under the direction of the Board.

[12] 84% of these members earned less than $4,000 a year, 58% less than $2,000 a year (R. 153).

the number of members increased to about 2,600 (R. 153, 500). A board of trustees elected by the members manages the business affairs of Group Health and elects its officers, but selection of doctors for its staff is in the hands of a Medical Director and the board of trustees does not exercise any supervision over the professional relation between staff doctors and member patients (R. 1224, 1228, 1232–3). The doctors on its staff are compensated by salary and serve full time (R. 293). In return for monthly dues, the member and his dependents, if any, are entitled to obtain medical examinations and treatments, laboratory tests, X-ray examinations, surgical operations, confinement care, nursing and ambulance facilities, house calls, and hospitalization not in excess of 21 days for any one illness (R. 1242).

FORMATION OF THE CONSPIRACY

AMA had for many years pursued a policy of opposition to all plans involving group practice on a risk-sharing basis. The policy was established by its House of Delegates [13] and was actively enforced

[13] In 1933 the House of Delegates formally disapproved the recommendation, made by the majority of the Committee on the Costs of Medical Care, that medical care for low-income families should be provided on a prepayment basis through doctors engaged in group practice (R. 219, 221–222). In 1934 the House adopted a resolution condemning a report of the American College of Surgeons in which the College indorsed prepayment plans (R. 138–143, 147–149). At the same session AMA adopted certain principles to govern the conduct of medical service plans for families with limited

both by its Council on Medical Education and Hospitals (*infra*, pp. 29–30) and by the Judicial Council, which repeatedly affirmed the expulsion of doctors from AMA because of their participation in such plans (R. 253–257, 1031–2). In addition, AMA had, through numerous official communications, condemned and attacked such plans.[14] The same policy was fully applied in this case.

Much of the critical evidence of the conspiracy of which petitioners were convicted is found in minutes of meetings of the District Society and of its Executive Committee[15] during the period between June 1 and October 6, 1937. The minutes of these meetings and other contemporaneous documentary evidence establish that the purpose of the conspiracy was to protect the economic interests of the doctor members of the District Society (who *ipso facto* were members of AMA, R. 1537) by preventing Group Health and its doctors from competing with the Society members in rendering medical service.

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means, one principle being that any such plan must include "all legally qualified doctors of medicine in the locality covered by its operation" (R. 1086–7). Adoption of this restriction meant that no plan providing for medical care by a salaried staff could obtain the approval of AMA.

[14] R. 966, 968–977, 979–980, 983–984, 1032–3, 1035–8, 1042–3.

[15] These minutes appear in Gov. Exs. 36 and 37. The former covers minutes of the meetings of the Executive Committee on June 1, 1937, and June 21, 1937 (R. 276, 283). The latter covers the minutes of the Society and of all other meetings of the Executive Committee. The index to the record (Index viii–ix) shows the pages of the record where the minutes of each meeting appear.

A special meeting of the Society's Executive Committee was called on June 1, 1937, to discuss the reported plan to provide medical care for HOLC employees (R. 276).[16] The chairman stated that plans of this kind "threaten the coming generation of physicians and their income" and a member pointed out that the medical profession had two "weapons" at hand, one, "to forbid consultation with the physicians doing this type of work," and the other, "to withhold approval of any hospital that would take any cases or assist in the movement in any way" (R. 277). Similar views were expressed at another special meeting on June 21 when a subcommittee, appointed to study the matter, made its report (R. 283–284, 320).[17]

[16] A few days earlier, a District Society member had written Woodward, director of AMA's Bureau of Legal Medicine and Legislation (R. 1538), that since the questions raised by the Group Health plan were of national interest, the AMA should take the initiative and Woodward should come to Washington to advise as to the "best methods of approach" (R. 889–890). Woodward then called upon Zimmerman, the sponsor of the Group Health plan (R. 890–891), told Zimmerman that as an AMA representative, he was "particularly disturbed" by Group Health's articles of incorporation, and predicted that after the plan was "given a going over" at the annual AMA meeting, this "would be the end of it" (R. 152, 891).

[17] The chairman of this meeting asserted that one of his sons had just completed his medical course and that another was just entering medical school and that this represented "a tremendous personal investment, the usefulness of which would be greatly curtailed by" the adoption of any plan such as that proposed by Group Health (R. 284). Another committee member said that two ways were available in "com-

The Executive Committee met again on June 24, 1937, and authorized the appointment of a new subcommittee to ascertain all of the facts concerning the Group Health plan (R. 290, 314). The report of this subcommittee, presented at a meeting of the Executive Committee on July 12, 1937 (R. 319–320), stated in part (R. 321):

> The present HOLC corporation is only a minor consideration: (a) Either innumerable others will follow or (b) a large all-embracing organization will succeed all smaller enterprises. The first eventuality is not of great concern to us. Competition will kill them and since they cannot be large enough to supply a proper quality of medical care or hospitalization on their own account subscribers will gradually withdraw. Also the Medical Society by its present control over its members, and through them of the hospitals can adequately fight (if it is so desired) these small units. * * *

The report stated that if an organization to cover all Government employees should be formed it would be assured of adequate financial support and would be able to secure qualified personnel (*ibid.*). The report then continued (R. 321–322):

> The Medical Society must therefore adopt a definite policy toward the cooperative

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batting or controlling any such scheme" as that proposed, "(1) through disciplining our own members who undertook to participate, and (2) the possibility of doing something to recalcitrant hospitals through pressure on their staffs" (*ibid.*).

movement as a whole, and at once, without wasting a great deal of time on the HOLC project. The alternatives of policy are primarily:

1. Approval of cooperatives as at present outlined.

2. A laissez-faire attitude of seeing what will happen.

3. Disapproval and active combat with all measures at our command.

4. Disapproval of all other plans and the offer of prepaid medicine through the Medical Society (a) either as a Society subsidiary or (b) through a change in the Medical-Dental Service Bureau.

The first of these, approval, is manifestly an impossibility. The second alternative threatens through inertia more than any other factor.

Active opposition is possible at present. Whether it is advisable is another matter, unless some substitute plan can be suggested. Failure to place the cooperative on the approved list of the Medical Society would automatically forbid any consultations by members of our Society. Any full-time employees of the corporation could probably easily fail to be put on the courtesy list of the hospitals for one reason or another without the fact of his connection with a cooperative being even mentioned. In fact any combative method would necessarily have to be camouflaged to the nth degree.

The report recommended that the Society form its own organization "for the distribution of prepaid medical care as a distinct unit *competitive* with any other organization that may be formed" (italics supplied) (R. 322).

Meanwhile, the AMA maintained an active interest in the matter. In June 1937, Woodward, director of its Bureau of Legal Medicine and Legislation (R. 1538), rejected a suggestion made by a Society member to West, AMA secretary and general manager (*ibid*), that the Society might "attempt to go along with this outfit [Group Health] if it is possible to do so and retain our faces" (R. 315, 316); Woodward stated that such an attempt at cooperation would violate AMA's Principles of Medical Ethics (R. 317). He promptly reported the matter to AMA's board of trustees, which authorized West and Fishbein, the Journal editor (R. 1538), "to proceed to inform the profession of the country as to the efforts of the HOLC to enter into the practice of medicine." The board also authorized Woodward and Leland, director of the Bureau of Medical Economics (R. 1538), to go to Washington "to try to advise the Medical Society of the District of Columbia if that Society is willing to accept advice" (R. 316–317).[18]

[18] Woodward, West, and Leland thereafter conferred on numerous occasions with Society representatives in Washington (R. 327, 337, 345–346, 891–893, 963, 1029–30). Woodward and Leland participated in Society meetings concerning Group Health (R. 903, 908, 963–964) and at their own request were kept fully informed of all local action and developments (R. 318–319, 326, 342, 352–354, 359, 922).

On July 26, 1937, the special subcommittee appointed by the District Society to deal with the Group Health problem (*supra*, p. 17) met with the Board of Trustees of Group Health and certain of its officers.[19] The subcommittee warned Group Health that unless it was "approved" by the Society all members of the Society would be prohibited from accepting employment with Group Health or consulting with doctors on its staff (R. 178–180). The suggestion was made that Group Health "convert itself into a financial organization" so that medical care would be provided, not through salaried doctors, but through such members of the Society as might agree to serve Group Health subscribers on some fixed fee schedule (R. 181, 185).[20]

A special meeting of the members of the Society was held on July 29 for the purpose of arriving at some conclusion concerning the action to be taken with reference to Group Health (R. 347–348). At this meeting, as the secretary of the Society

[19] The discussion at this meeting was transcribed by HOLC employees (R. 156) and the transcript was introduced in evidence as Gov. Ex. 10 (R. 176–197).

[20] A member of the subcommittee stressed the competitive threat implicit in the Group Health plan if it should obtain maximum enrollment. After noting that there are about 180,000 Government employees in the District of Columbia, he said (R. 191): "Multiply that by 3.3, you see what it would do here as an economic thing. * * * It would simply result in the necessary exodus of a large part of the medical profession of the District of Columbia * * *."

reported to AMA, "various opinions were expressed by individual members ranging from the taking of most drastic measures in the way of boycott, etc., to various conciliatory propositions" (italics supplied) (R. 354). The meeting approved the appointment of a new subcommittee to make a report on the matter to the Executive Committee (R. 351).

The subcommittee reported to the Executive Committee on September 8, 1937 (R. 357). Its report, which the Executive Committee "accepted," consisted of three conclusions—(1) that Group Health is "unethical" and that participation therein by any Society member would render him "subject to disciplinary action by the Society," (2) that at this time it had no definite recommendation to make for "combatting" the activities of Group Health "other than is embodied by implication" in the first conclusion; and (3) that the Society "should maintain close contact" with AMA "in an effort to formulate a suitable and effective policy with respect to combatting the activity of the Group Health Association" (R. 357–358).[21]

[21] A member of the Executive Committee, advocating more definitely aggressive action, said that he looked upon Group Health as an organization "coming in and interfering with his business": that he expected to be in practice for some 20 years and did not propose, if it could be avoided, to have an organization of this kind "interfere with his work and income," adding, "Just what are you fellows going to do about it?" (R. 358.)

Thereafter, in the October 2 issue of the AMA Journal, an article prepared by Woodward [22] pursuant to the directions of AMA's board of trustees to inform "the medical profession of the country as to efforts of the Home Owners' Loan Corporation to enter into the practice of medicine" (*supra*, p. 19) denounced the Group Health plan. The article embodied suggestions to the District Society of a course of action which might successfully cripple and perhaps destroy Group Health (R. 384, 385):

> As the members of the salaried staff of the association are likely to be looked on by the profession generally in the community as on the outer verge of ethical practice, if not altogether beyond the pale, it is not clear how they are to obtain qualified consultants or procure hospital service for their patients.
>
> * * * * *
>
> In any event, medical service under the association would be likely to be handicapped by difficulty likely to be experienced in obtaining the best consultant service and hospital accommodations. Physicians who sell their services to an organization like Group Health Association for resale to patients are certain to lose professional status.

[22] The article, which was introduced in evidence as Gov. Ex. 293 (R. 368–386), was prepared at the request of AMA's board of trustees (R. 316, 367). It was written by the director of its Bureau of Legal Medicine and Legislation and was extensively revised prior to publication by the editor of the Journal (R. 893–894).

The article also stressed the economic dangers to the local profession presented by Group Health. It pointed out that Group Health could potentially reach and withdraw from private practice three-fourths of the population of the District of Columbia and that even if half this number were withdrawn, this would "materially disturb" medical practice in the District (R. 385).

At a meeting of members on October 6, three days after publication of this article, the Society adopted (R. 387–390) the following resolution (R. 388–389):

> Whereas, The Bureau of Legal Medicine and Legislation of the American Medical Association has prepared and published a comprehensive report on the activities of Group Health Association, Incorporated; and
>
> Whereas, The Medical Society of the District of Columbia is in full accord with the content of said report, both as to the established facts set forth therein and the implications drawn therefrom; therefore, be it
>
> Resolved, That the Medical Society of the District of Columbia cause a copy of said report to be sent to each of its members as an indication of its future policies with respect to combatting the activities of said Group Health Association and also with respect to the ethical responsibilities of the Medical Society of the District of Columbia and of its individual members.

OPERATION OF THE CONSPIRACY

A. *Boycott of Group Health and its Staff by the Petitioners and Their Members*

At a special meeting of the Society's Executive Committee on July 12, 1937, it adopted, pursuant to Chapter IX, Article IV, Sec. 5, of its constitution, a list of "approved" organizations and individuals practicing medicine in the District of Columbia (R. 327, 332–334). Group Health was not included in the list.

The evidence establishes that the omission of Group Health from this "white list" was for the express purpose of bringing into play against it the provision of the same section of the constitution (R. 331) that "no member of the Society shall engage in any professional capacity whatsoever with any organization * * * which has not been approved by the Society." At the meeting at which this white list was adopted the subcommittee reported that the failure to put Group Health on the approved list "would automatically forbid any consultations by members of our Society" (R. 322).[2] In response to a member's inquiry as to the medical personnel of Group Health it was stated that Group Health "would have to be ap-

[2] When the list was submitted to the committee one paragraph included as "approved" all the medical personnel "connected with" the Federal Government (R. 332–333). Group Health might be said to be connected with the Federal Government and the Committee accordingly substituted the words "employed by" for the words "connected with" (*ibid.*).

proved as a single unit" (R. 333). When the list was sent by registered mail to every Society member, as directed by the Executive Committee, the letter of transmittal not only quoted the constitutional provision prohibiting members from having professional relations with any organization not approved by the Society (R. 334), but enclosed a second letter which, with direct reference to Group Health (R. 1197), said (R. 341):

> It may have come to your attention that there is an organization or organizations that are interested in gaining medical personnel. Your attention is called to Chapter IX, Article IV, Section 5 of the constitution, quoted in full.

The Society's exclusion of Group Health from its approved list operated, without further action by the Society, to prevent its members from joining Group Health's staff and from consulting with doctors on its staff. The District Society's failure to approve Group Health not only prevented it from obtaining members of the Society for its staff (R. 151–152), but also prevented it from obtaining other AMA members for its staff (R. 237, 1357–8).[24]

[24] The Journal article denouncing Group Health and suggesting that "it is likely to be handicapped by difficulty experienced in obtaining 'consultant service' and hospital accommodations" (*supra*, p. 22) was written by AMA representatives with full knowledge that the Society had issued the white list excluding Group Health and that the subcommittee had reported that no Society member could retain his AMA or Society membership if he participated in Group Health (R. 892, 922).

The Society and AMA undertook to enforce the boycott resulting from its white list. Group Health, prior to the opening of its clinic on November 1, 1937, had persuaded two members of the District Society, Drs. Lee and Scandiffio, to become members of its staff (R. 652, 1442). On October 29, AMA notified the Society that these two doctors were members "in good standing" of the Society (R. 410). Although both doctors, late in October, submitted resignations as members of the Society (R. 453), the Society on November 2 summoned them to appear before its CC&IM Committee (R. 453–454). When they failed to appear this committee charged them with violating the Society's constitution by having relations with an organization not on the approved list and by failing to submit a copy of their agreement with Group Health to the CC&IM Committee for approval (R. 455–456).[28]

On the second day of the hearing before the Executive Committee, to which the charges were referred, Dr. Lee was notified that the proceeding against him would be dropped if he would promptly submit to the Society a copy of his resignation from Group Health (R. 558, 653–654). Dr. Lee complied and the proceeding against him was

[28] At a conference in Chicago on November 6, AMA's representatives were informed of the expulsion proceedings instituted against the two doctors, and were kept advised of the subsequent course of the proceeding (R. 563–564, 900).

dropped (R. 460–461). The proceeding against Dr. Scandiffio continued and resulted in his expulsion from the Society on March 16, 1938, for alleged violation of Chapter IX, Article III, Secs. 1 and 2, and of Chapter IX, Article IV, Sec. 5, of the constitution (R. 558–563).

Another Society member, Dr. Richardson, who was employed by Group Health to make house calls, resigned from its staff in July 1938 because of fear of losing hospital privileges (R. 630–631, 717).

The Society also rigidly enforced the prohibition against consultation with Group Health doctors. After one of the Society members had, solely for this reason, refused two requests for consultation, one in the case of a patient suffering from acute heart trouble and another in the case of an elderly lady who was so ill that the Group Health doctor thought she might die in the office (R. 951–954), the president of Group Health reported the matter to the president of the District Society (R. 544–545). The latter replied that he had personally advised the doctor in question that the Society's constitution prohibited consultation with any Group Health doctor and that it was his duty to advise that, under the constitution, consultation with "the hired agents" of Group Health is forbidden (R. 545–547).

When it was discovered that a Society member, Dr. Trible, had permitted a Group Health doctor to be present at an operation performed by Dr.

Trible on a child of a Group Health member and had later written the medical director of Group Health in response to a request from him for information concerning the case, the CC&IM Committee found Dr. Trible "guilty" of violating the provision of the constitution prohibiting professional relations with any organization not approved by the Society (R. 666–669, 670–671, 678). The Executive Committee, after receiving Dr. Trible's assurance that he would not in the future "in any way knowingly violate the ethics of the profession or the Constitution" of the Society, dropped the charges (R. 680) but sent him a letter warning him not to repeat his actions (R. 672).[28]

B. *Boycott of Group Health and Its Staff by the Washington Hospitals*

For doctors in general, access to hospital facilities is "valuable and important"; for the surgeon, it is "essential." The privilege of treating his patients in a hospital is obtained in one of two ways, by being a member of the hospital's "regular staff" or by being a member of its "courtesy staff." While the business and financial affairs

[28] In May 1938 the Society adopted a motion "that the Medical Society of the District of Columbia go on record as forbidding its members to receive monies or checks for services rendered to beneficiaries of Group Health Association, Inc., from or over the signature of Group Health Association, Inc., or its agencies and so notify the membership of the Medical Society" (R. 611–612).

of most hospitals are under the control of a lay board, its medical affairs are in the hands of a group of doctors known as the regular or attending staff. This staff determines the professional policies of the hospital and is responsible for the treatment of charity patients. Since the available positions on the regular staff are limited, the bulk of the profession obtains the privilege of treating its patients in a hospital by being included in the so-called courtesy staff. The doctors on the regular staff determine appointment to the courtesy staff. (R. 211–213.)

Both AMA and the Society proceeded to bring pressure to bear upon the Washington hospitals to exclude Group Health doctors. AMA's action took the form of forcing the hospitals to comply with the Mundt resolution of 1934, providing that hospitals approved for interne training should be limited in their staffs only to doctors who are AMA members.[27] In June 1937, the Council on

[27] AMA had similarly on other occasions followed the practice of invoking the Mundt resolution to compel hospitals to exclude doctors connected with medical service plans of which AMA disapproved. In 1938, immediately after the Judicial Council had affirmed the expulsion of certain Milwaukee doctors from the Milwaukee Medical Society because they were engaged in a group-practice prepayment plan, Cutter, secretary of the Council on Medical Education and Hospitals (R. 1538), advised the Milwaukee hospitals that the Mundt resolution required them to limit their staffs to members of the Milwaukee Society and that they were therefore obliged to withdraw privileges from the group

Medical Education and Hospitals conducted, for the first time since the adoption of the Mundt resolution in 1934, an inspection of Washington hospitals (R. 784–785). Following this inspection, Cutter, secretary of the Council on Medical Education and Hospitals (R. 1538), addressed letters to five of the local hospitals enclosing a copy of the applicable inspection report. The letters, after calling attention to the Mundt resolution, asked "What possibility, if any, exists for the observance of this recommendation?" (R. 265–266, 268, 270, 272–275). When he failed to hear from one of the hospitals he sent a second letter inquiring whether any action had been taken to enforce the resolution and he was then informed that it would be enforced except as to the teaching staff in its psychiatric department (R. 273–274). Another hospital, similarly pressed for a reply, responded that all except one member of its staff were members of the District Society and that the Mundt resolution "meets with the approval of the Medical Board as respects future appointments" (R. 275–276).

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practice doctors (R. 253–258, 814–821, 829–831). When two hospitals hesitated to do this, Cutter secured their compliance by notifying them that approval of the hospitals for interne training would be withdrawn unless they conformed with the requirement of the Mundt resolution (R. 258, 803, 821–823, 832).

The Council on Medical Education and Hospitals withdrew its approval from a hospital in Little Rock, Arkansas, and from a hospital in Tampa, Florida, because they permitted doctors engaged in prepayment plans to remain on their staffs (R. 247–249, 848–849, 863–864).

The Society implemented the AMA action in respect of hospitals. The white list adopted on July 12, 1937 (*supra*, p. 24), was sent to the various Washington hospitals.[*] After the Society had decided to model its policy on the "facts" and "implications" of the Journal article of October 3, 1937, in which it had been stated that Group Health was likely to experience difficulty in obtaining hospital accommodations (*supra*, p. 22), a division of opinion arose in the District Society as to the most effective way to induce a boycott of Group Health by Washington hospitals.

One group favored sending a letter to the hospitals informing them of the particular sections of the constitution relating to approval of hospitals and warning them that "if they failed to cooperate in every way that they might not be on the approved list" (R. 402). A letter giving effect to this proposal was drafted and approved by the Executive Committee (*ibid.*). But when the proposed letter was submitted to the Society membership on November 3, 1937, one of the members pointed out that this was not a wise way to accomplish the Society's objective because it "carried a veiled threat to the effect that if the hospitals did not comply the Society would unstaff them" (R. 424). He urged that the Society's Hospital Committee (one or more of whose members were on the regular

[*] Gov. Exs. 494 (R. 608); 500 (R. 599); 514, 515 (R. 621); 527 (R. 1797); 528 (R. 661); 615, 616 (R. 727).

staff of each Washington hospital) would be a more suitable medium to handle the matter and he proposed the following resolution, which the Society then adopted (R. 422-423):

> Whereas, The Medical Society of the District of Columbia has an apparent means of hindering the successful operation of Group Health Association, Inc., if it can prevent patients of physicians in its employ being received in the local private hospitals; and
>
> Whereas, The Medical Society of the District of Columbia has no direct control over the policies of such hospitals as determined by their lay boards of directors, except through its control of its own members serving on their medical staffs; and
>
> Whereas, Conflicts between the Medical Society of the District of Columbia and any local hospitals arising from an attempt to enforce the provisions of Chapter IX, Article IV, Section 5, of its Constitution should be assiduously avoided, if possible, because of the unfavorable publicity that would accrue to its own members; therefore, be it
>
> Resolved, That the Hospital Committee be, and is hereby, directed to give careful study and consideration to all phases of this subject and report back to the Society, at the earliest practicable date, its recommendations as to the best way of bringing this question to the attention of the medical boards and boards of directors of the various local hospitals in such a manner as to insure

the maximum amount of practical accomplishment with the minimum amount of friction and conflict.

The Hospital Committee complied with this resolution by presenting a report to a meeting of the Society held eight days later recommending that the Society adopt a resolution that the hospitals permit Group Health patients to be treated only by the doctors on their respective staffs and that a copy of the resolution be sent to the various local hospitals (R. 441, 449). The recommendation was deemed unsatisfactory in that it gave no assurance that Group Health doctors "might not become members of the staffs of the local hospitals" and it was therefore recommitted to the Hospital Committee (R. 449–450).

At a meeting on December 1, 1937, the Society adopted a new resolution proposed by the Hospital Committee. This resolution set forth that the Society "strongly recommends" that all hospitals follow the recommendation of AMA [29] "regarding the constitution of their entire Medical Staffs, namely, that each appointee be a member of" the District Society or of the local medical society where he was resident and a member of AMA (R. 459). The Society also adopted a motion to transmit a copy of this resolution to each local hospital (*ibid.*).

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[29] The recommendation referred to was that embodied in the Mundt resolution (*supra*, pp. 10–11).

This resolution, if complied with, would bring about the desired boycott of Group Health by Washington hospitals. Since Group Health doctors were barred from membership in the District Society (the only medical society open to doctors residing in the District of Columbia), if the hospitals limited their staffs to such membership, Group Health doctors would automatically be excluded from Washington hospitals.

The District Society had effective means for inducing or coercing compliance with its recommendation. Its constitution prohibited its members from serving on the staff of any hospital not approved by the Society (*supra*, p. 13). Since nearly all of the doctors on the staffs of the local hospitals were members of the Society,[20] the Hospital Committee could unstaff any local hospital by the expedient of eliminating it from the approved list.

At a meeting of the Society on February 2, 1938, a motion that the proper agency of the Society be instructed to present at its next meeting "the facts relating to the present status of Group Health physicians at the various Washington Hospitals preliminary to appropriate disciplinary action, in event any hospital has ignored the Medical Soci-

[20] For a roster of the Society membership, see Gov. Ex. 33 (R. 1629–49) and for a roster of the staffs of the local hospitals, see Gov. Exs. 451–A (R. 1876–81); 477 (R. 1741–59); 504 (R. 1775–1776); 513 (R. 1778–9); 519 (R. 1785–89); 525 (R. 1791–97); 603 (R. 1819–20); 613, 613–A (R. 1829, 1831–41); see also Index, Vol. 3, p. iii.

ety's wishes in the premises," was referred to the Executive Committee, and on February 21, 1938, was referred by that committee to the Hospital Committee (R. 475, 477). Pursuant to this motion, the Chairman of the Hospital Committee requested each of its members to inquire of the hospital which he represented whether it had taken any action on applications of doctors connected with Group Health and whether it had "recently revised" its staff list (R. 244–245, 549). The chairman also sent to each hospital a questionnaire requesting information concerning its correspondence with Group Health, the names of Group Health doctors having staff privileges, whether it is "in sympathy with" the policies of the District Society, whether it requires Society membership as a qualification for staff appointment, and the percentage of its staff holding membership in the Society (R. 244, 595–596).

The report based on responses to this questionnaire was submitted to the Executive Committee on March 28, 1938, and was adopted by the Society at a meeting on April 6, 1938 (R. 556, 565–567). The report, after stating that the by-laws of all but three of the local hospitals provide that no doctor may practice in the hospital unless he is a member of his local medical society, states further (R. 557–558):

> All of the local private hospitals are cooperating fully with the Medical Society in

respect to Group Health Association, Inc. At the present time only one of the local hospitals has on its staff list the name of a physician connected with Group Health Association, Inc. This hospital does not revise its staff list annually, as do the other hospitals, but it has assured the Chairman of the Hospital Committee that steps have been taken to deny this physician hospital privileges.

By reason of these various acts of the District Society or by reason of action taken by AMA (*supra*, pp. 29–30), the local hospitals (with one or two possible exceptions) limited their staffs to AMA or Society members. In the fall of 1937 or the first half of 1938, five hospitals (Children's, Columbia, Georgetown, Homeopathic, Providence) formally adopted such a rule,[39] and two others, Garfield and Sibley, gave assurances to the District Society that they would carry out the policy expressed in its December 1 resolution (R. 600, 608, 609). Casualty Hospital advised the Society in February 1938 that it had no applications from Group Health doctors and that it had undertaken to revise its list of staff doctors (R. 553). Emergency Hospital's rule, adopted in 1936, limited its staff to members of the Society but it had not actively enforced the rule until, after receiving the Society's inquiries, it ordered that its courtesy list

[39] Gov. Exs. 228 (R. 275–276); 238 (R. 269); 241 (R. 271–272); 318 (R. 551–552); 440–A (R. 621); 454–A (R. 575); 501 (R. 603–604); 522 (R. 685–686).

be checked and that doctors not members of AMA "be notified that they must join the Medical Society, or the hospital will be obliged to revoke their privileges" (R. 587, 591–592).

Despite repeated applications in the period from November 1937 to December 1938, all of the local hospitals excluded all of the Group Health doctors because of their connection with that organization. Since it was essential for the Group Health surgeon, Dr. Selders, to have hospital privileges, the efforts by Group Health to obtain hospital privileges for its staff centered around him. All of the local hospitals either failed to act upon his request for hospital privileges [32] or denied it.[33] Similar treatment was accorded the applications of all other Group Health doctors.[34]

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[32] Children's (R. 500–508, 684–685); Columbia (R. 484–488, 508–510, 618–621); George Washington (R. 520–522); Episcopal (R. 518–520).

[33] Casualty (R. 522–525); Emergency (R. 512–518); Garfield (R. 492, 495–496, 534–536, 600–602, 1162); Georgetown (R. 488–490, 536–537, 622–623); Homeopathic (R. 166–167, 538–539); Providence (R. 482–484, 540, 604–605); Sibley (R. 526–532, 1318–9).

[34] When Dr. Lee, having joined Group Health's staff, submitted his resignation to the Society, Emergency withdrew his staff privileges and restored them only when it was assured that he was still a member of the Society (R. 586–587).

Dr. Hulburt had been granted privileges in Georgetown in 1935 (R. 625). After he joined the staff of Group Health Association, he was told by the superintendent of Georgetown that he no longer had hospital privileges (R. 627–628). Within a month after Dr. Hulburt resigned from Group Health Association, he was formally granted courtesy priv-

One instance of treatment of a Group Health member by a Group Health doctor in a Washington hospital provoked prompt counter-action. Garfield Hospital, pursuant to its usual practice with respect to applicants, granted Dr. Selders temporary privileges pending action upon his application (R. 658–659). A Group Health member injured in an automobile accident was taken by ambulance to Emergency Hospital and, after it had refused to allow her to be treated by Dr. Selders, she was transferred to Garfield and treated there by Dr. Selders (R. 656–657). The following day the president of Emergency addressed a letter to the president of Garfield requesting "a full explanation of the circumstances under which this patient has been permitted to enter Garfield" (R. 658–659). A copy of the letter was sent to the District Society (R. 659). The secretary of the Society replied that the "important subject matter will be given prompt consideration" and referred the letter to the Hospital Committee (R. 660–661). Thereafter

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ileges by Georgetown (R. 628). He received somewhat similar treatment from Columbia (R. 630).

Dr. Halstead joined the Group Health staff in August 1938 (R. 709). He applied for privileges at five of the hospitals, including Georgetown, where he had interned (R. 709). No action was taken on his applications (R. 701).

Dr. Price applied for privileges at Homeopathic and Garfield in the spring of 1938 (R. 949). Homeopathic never granted him privileges and Garfield did not do so until December 19, 1938, the day before the indictment in this case was returned (R. 949, 1180).

Garfield, notwithstanding its well-established rule that any doctor may treat his patient there in an emergency case (R. 494, 1176–7), was careful to prevent Dr. Selders from using its facilities even in emergency cases.[35]

SUMMARY OF ARGUMENT

I

A. Petitioners conspired to boycott Group Health in order to prevent it from marketing medical services in competition with petitioners' doctor members. This Court has consistently held that such a boycotting combination to exclude a competitor from the market is a *restraint* of trade prohibited by the Sherman Act. These decisions have not been rested upon the ground that there had been price-fixing or that competition had been suppressed to the extent that market prices were substantially affected.

This Court did not hold in *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, that the restraints of trade condemned by the Sherman Act are limited to those involving price-fixing or a suppression of competition which substantially affects market prices. The case held only that the restraints prohibited by

[35] For the facts concerning Garfield's refusal to allow Dr. Selders to perform an emergency appendicitis operation, see R. 693–696, 753–754, 757; 762–763. Following this incident, Garfield, which had not previously defined "emergency," adopted a definition which specifically stated that it applied to Group Health (R. 1176–7).

the Act are those which suppress or substantially restrict competition in the marketing of goods or services and price-fixing was referred to merely as one conspicuous example of the type of restraint declared illegal. This interpretation of the *Apex* case is confirmed by *Fashion Originators' Guild, Inc.* v. *Federal Trade Commission*, 312 U. S. 457, which held that an intent to increase prices is not "an ever-present essential" of conduct constituting a violation of the Sherman Act.

B. The conspiracy to prevent Group Health from successfully carrying on its business of furnishing medical service to members of the consuming public was a restraint of *trade* prohibited by the Sherman Act. The act applies to restraints upon competition in providing services as well as goods and Congress cannot be presumed to have intended to exclude consumers of medical service from the protection extended generally to purchasers and consumers of goods or services.

Group Health was engaged in a large-scale undertaking to provide medical service in exchange for payment of dues. This exchange of service for money is trade in the primary and most usual meaning of the word. The fact that Group Health is a non-profit corporation is immaterial. Its business operations were trade, although carried on for the benefit of its consumer-members rather than for the benefit of stockholders.

Under the district court's charge to the jury, petitioners' convictions must be sustained if the

restraints upon the trade of Group Health are within the ban of the statute. But if the application of the Act to restraints upon individual doctors in the pursuit of their calling is an essential issue in this case, such restraints are within the scope of the common-law concept, embodied in the Sherman Act, of restraint of trade.

II

Section 20 of the Clayton Act grants immunity only where there is dispute concerning some question of employment involving the employer-employee relationship. Petitioners cannot subsume themselves under the class of employee representatives under the Act since petitioners' members were not employees and did not want to be employees. Rather, petitioners are analogous to a trade association representing independent business units. Nor was the controversy itself of a kind contemplated by the Clayton Act. The dispute between petitioners and Group Health was as to whether the latter's method of providing medical services should be permitted to operate. A controversy of this kind, between competitors and concerning competition, is not within the scope of Section 20. *Columbia River Packers Ass'n, Inc.* v. *Hinton*, 315 U. S. 143. A further factor establishing the inapplicability of the Clayton Act is that, even assuming that petitioners were "employee representatives," there was no employer-employee relationship in respect of Group Health

and its doctors. As the court below observed, the Group Health doctors are independent contractors, not employees; the relationship which was of concern to Congress in its enactment of the Clayton and Norris-LaGuardia Acts, therefore, is entirely lacking here.

ARGUMENT

I

THE ACTS FOR WHICH PETITIONERS WERE CONVICTED CONSTITUTE A CONSPIRACY IN "RESTRAINT OF TRADE" WITHIN THE MEANING OF SECTION 3 OF THE SHERMAN ACT

Petitioners were convicted of conspiring to prevent Group Health and the doctors on its staff from rendering or providing medical service to that portion of the general public represented by Government employees and their families, in competition with petitioners' doctor members. Petitioners contend that this is not a conspiracy in "restraint of trade" within the meaning of Section 3 of the Sherman Act. They contend that there was no showing that they conspired to fix prices or to suppress competition "to the extent that market prices are substantially affected to the injury of the public" and that therefore there is no "restraint" of trade within the prohibitions of Section 3. They urge also that their conspiracy restrained only the practice of medicine and the rendering of medical care and that restraint upon such activities is not

a restraint of "trade" within the meaning of Section 3.

It is our view that the issues thus presented cannot be resolved, as petitioners assume, by inquiring into the meaning of the single word "trade" and of the single word "restraint" divorced from their context in the phrase "restraint of trade." The question of statutory interpretation presented rather is the meaning of this phrase. "The common law doctrines relating to contracts and combinations in restraint of trade were well understood long before the enactment of the Sherman law," and Congress, in adopting the Sherman Act, found ready at hand "the common law concept of illegal restraints of trade" and "took over that concept." *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 497, 498.[38] The words of the phrase must, therefore, be construed as a unit and with reference to the common law concept from which it originated.

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[38] See also *United States* v. *Addyston Pipe & Steel Co.*, 85 Fed. 271 (C. C. A. 6), affirmed 175 U. S. 211, and *Standard Oil Co.* v. *United States*, 221 U. S. 1, 51, discussed in the *Apex* opinion, pp. 498–499.

The legislative history of the Act affirms this conclusion. In the debate on the bill Senator Hoar, a member of the Judiciary Committee, stated that the Judiciary Committee had, with reference to interstate and foreign commerce, "affirmed the old doctrine of the common law" (21 Cong. Rec. 3146). At a later point he declared: "The great thing that this bill does * * * is to extend the common-law principles" to such commerce (21 Cong. Rec. 3152). Senator Edmunds, chairman of the Judiciary Committee, explained that the intent was to define the offense in "terms that were well known to the law already" (21 Cong. Rec. 3148).

A. *Petitioners' Conspiracy to Exclude a Competitor from the Market, by Means of Boycott, is a Conspiracy in RESTRAINT of Trade Prohibited by Section 3*

Petitioners' contention (Br. 32–44) that there is not restraint of trade unless prices are fixed or competition is suppressed to the extent that market prices are substantially affected to the injury of the public is without support in, and wholly negatived by, the uniform course of holdings by this Court. It has long been firmly established that the Sherman Act prohibits as in restraint of trade a conspiracy by any dominant group engaged in offering goods or services to the general public to use the weapon of the boycott in order to exclude competitors from the market or to fix the conditions upon which competitors may enter the market.[37] In none of these decisions,

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[37] *Montague & Co.* v. *Lowry*, 193 U. S. 38; *Straus* v. *American Publishers' Ass'n*, 231 U. S. 222; *Eastern States Retail Lumber Dealers' Assn.* v. *United States*, 234 U. S. 600; *Binderup* v. *Pathe Exchange, Inc.*, 263 U. S. 291; *Paramount Famous Lasky Corp.* v. *United States*, 282 U. S. 30; *United States* v. *First National Pictures, Inc.*, 282 U. S. 44; *Sugar Institute, Inc.* v. *United States*, 297 U. S. 553, 587–589, 601; *Fashion Originators' Guild, Inc.* v. *Federal Trade Commission*, 312 U. S. 457.

Anderson v. *United States*, 171 U. S. 604, is sometimes cited as a contrary authority. That case held that an agreement by members of an exchange, composed of traders in livestock on a stockyards, not to deal with any nonmember trader did not violate the Sherman Act. The decision has subsequently been treated as resting on the holding that the facts did not

from *Montague* v. *Lowry*, decided in 1904, to the *Fashion Guild* case, decided last year, did the decision turn upon the ground that the boycotting group had fixed prices or had suppressed competition to the extent that market prices were substantially affected.[38] Indeed, except in *Straus* v. *American Publishers' Assn.*, which involved a boycott to enforce resale price maintenance, there was no evidence in these cases of price-fixing and none that competition had been suppressed to the extent claimed necessary by petitioners.

In the present case the conspiracy to prevent the successful operation of Group Health and to eliminate it as a competitor was entered into because petitioners believed that Group Health's method and plan of operation—providing medical care for persons of low income by means of group medical practice and the advance payment of uniform dues—threatened the economic interests of petitioners' doctor members. In several of the decisions condemning boycotts as unlawful restraints of trade the objective was similarly to prevent a form of competition deemed to be inimical

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disclose any restraint upon *interstate* commerce. *Montague & Co.* v. *Lowry*, *supra*, p. 48; *Loewe* v. *Lawlor*, 208 U. S. 274, 297; *Swift & Co.* v. *United States*, 196 U. S. 375, 397–398.

[38] While these decisions involve Section 1 of the Sherman Act, the prohibitions of Section 3, couched in the same language, are at least as broad in their scope as those of Section 1. *Atlantic Cleaners & Dyers, Inc.* v. *United States*, 286 U. S. 427, 434–435.

to the economic interests of the boycotting group.

For example, in *Eastern States Retail Lumber Dealers' Ass'n* v. *United States*, 234 U. S. 600, associations of retail dealers circulated among their members lists of wholesalers who sold direct to consumers, with the understanding that their members would refuse to deal with wholesalers thus listed. Sales direct from wholesaler to consumer by-passed the retailer and the retailers retaliated by combining to prevent the loss of business resulting from this form of competition, just as the present petitioners combined to prevent the loss of business which they feared would result from the operations of Group Health. And indeed, the boycott was even more complete and sweeping in the instant case since petitioners utilized not only their own members—whose positions paralleled the fellow-retailers in the *Lumber Dealers* case—but they forced third parties, the Washington hospitals, into the boycotting combination.

In this respect, the instant case closely resembles the situation condemned by this Court in *Fashion Originators' Guild, Inc.* v. *Federal Trade Commission*, 312 U. S. 457. In that case garment manufacturers who claimed to be creators of original designs agreed to boycott retail stores which sold clothes copied from their designs by other manufacturers. The Guild members, by this means, induced or coerced some 12,000 retail stores to "cooperate" in the boycott of copied garments. The Guild also employed "shoppers" to discover and

report whether stores were carrying copied garments and it established tribunals to determine whether particular garments were in fact copied from a Guild member's design.

The introduction of the retail stores into the boycotting combination is, we submit, in all respects analogous to the utilization of the Washington hospitals in the boycotting combination directed against Group Health. And the potential power of that combination fully equalled that of the combination of Guild members. While the "cooperating" retail stores numbered some 12,000, many remained outside the combination, while *all* of the non-Government Washington hospitals were induced to participate in the combination against Group Health. Moreover, the petitioners coerced this participation (*supra*, pp. 29–36), just as the Guild members used coercion to secure the cooperation of retail stores.

The policing methods employed in the present case to effectuate the combination are similarly analogous to the methods for policing their conspiracy used by Guild members. Petitioners, utilizing various "rules of conduct" embodied in or adopted under the District Society's constitution or AMA's Principles of Medical Ethics, established a "white list," investigated and brought to trial alleged infractions of these "rules," and probed into and exercised control over the affairs of the Washington hospitals—all for the purpose of

destroying the business and operations of Group Health.

This Court, in holding that the combination of Guild members was "well within the inhibitions of" the Sherman Act,[9] used words which, so far as the unlawful character of the restraint is concerned, apply with equal force to the present case (pp. 467–468):

> * * * the aim of petitioners' combination was the intentional destruction of one type of manufacture and sale which competed with Guild members. The purpose and object of this combination, its potential power, its tendency to monopoly, the coercion it could and did practice upon a rival method of competition, all brought it within the policy of the prohibition declared by the Sherman and Clayton Acts.

And this Court's statement in that case (pp. 465–466), that

> * * * the combination is in reality an extra-governmental agency, which prescribes rules for the regulation and restraint of interstate commerce, and provides extra-

[9] The Federal Trade Commission, in a proceeding under the Trade Commission Act, had found that the practices of the Guild members, done in combination, constituted unfair methods of competition. This Court, in reviewing the Commission's order, held (p. 463) that practices which violate the Sherman Act may properly be found to be unfair methods of competition, and the Court therefore considered and passed upon the question whether the combination came within the condemnation of the Sherman Act.

> judicial tribunals for determination and punishment of violations, and thus "trenches upon the power of the national legislature and violates the statute." *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211, 242.

is (except that this case concerns trade only in the District of Columbia) of equal applicability here.

But without referring to these cases involving restriction of competition by boycotts, petitioners insist that *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, establishes that the Sherman Act prohibits only those restraints which involve price-fixing or suppression of competition to the extent that market prices are "substantially affected". But no such narrow and inflexible rule can be deduced from the wholly different situation with which this Court dealt in the *Apex* case.

The *Apex* case involved not a boycott by one competing group against another; but a strike by employees against an employer, which effectively brought a cessation of the employer's interstate business. This Court did not question the authority of the boycott cases but observed that they involved a "suppression of competition" (310 U. S. at p. 506) and were not, therefore, decisive. And indeed, the Court, in the *Apex* case explicitly referred to price-fixing as only one of the indicia of the type of restraints of trade which the Sherman Act condemns. Thus it said (pp. 500–501):

> Restraints on competition or on the course of trade in the merchandising of articles

> moving in interstate commerce is not enough, unless the restraint is shown to have or is intended to have an effect upon prices in the market *or otherwise to deprive purchasers or consumers of the advantages which they derive from free competition.* * * * [Italics added.] [46]

The Court, therefore, held in the *Apex* case, that since the defendants there involved made no attack on competition in the market, and their purpose was not to suppress or restrict competition, but rather to attain some labor objective, their activities did not fall within the prohibitions of the Act. The Court specifically left untouched the boycott cases and, indeed, affirmed the doctrine of those cases that the range of proscribed restraints is not exhausted by price fixing and such suppression of competition as substantially fixes price. And this conclusion is reenforced by the *Fashion Guild* case, *supra,* decided subsequent to the *Apex* case. In the *Fashion Guild* case which, as we have noted, closely parallels the instant situation, the contention was made that the combination there involved could not violate the Serman Act since there was no finding that it fixed or regulated prices, limited production, or resulted in a deterioration of the quality of goods. The Court, in rejecting this contention, declared (p. 466) that "action falling into these three categories does not exhaust the types of conduct banned by the

[46] For other similar statements in the *Apex* case, see pp. 493, 497.

Sherman and Clayton Acts" and (p. 467) that "While a conspiracy to fix prices is illegal, an intent to increase prices is not an ever-present essential of conduct amounting to a violation" of those Acts.

In any event the very test of suppression or restriction of competition embodied in the *Apex* case is plainly met here. The purpose of the conspiracy in this case was to eliminate the competition of Group Health, and thereby to deprive purchasers and consumers—potential patients in need of medical care—of the advantages which accrue to them from free competition in the market. The suppression of competition by these means is plainly no less onerous than the suppression arising when market prices are manipulated or controlled.[9]

B. *Petitioners' Conspiracy to Restrain Group Health in Its Business of Providing Medical Care and Hospitalization Was in Restraint of TRADE Within the Meaning of Section 3*

If, as we submit, petitioners' activities constituted a "restraint" within the intendment of the

[9] While the words "marketing" and "market" are not customarily used with reference to medical service, the various physicians who, in a given locality, hold themselves out as ready to serve the public are, from the standpoint of restraint of trade or restraint of competition, in all respects analogous to the body of vendors who, in a particular locality, are engaged in offering goods for sale to the public. The market is the composite of all purveyors of goods or services, on the one hand, and of all potential purchasers or consumers thereof, on the other hand.

clause "restraint of trade" as used in the Sherman Act, we reach the second branch of the case, whether that which was restrained was "trade" within the meaning of the same clause.

Preliminarily, the exact nature of this second issue must be delimited; petitioners, we submit, have mistaken its scope. In examining whether "trade" was involved here, petitioners' main contention (Br. 29–31) rests upon the hypothesis that, for their conviction to be sustained, it must be established that the word "trade" encompasses an individual doctor's practice of his calling and that any restraint upon such practice is a restraint of trade within the meaning of the Act. But no such broad issue is tendered by this case. Rather, the "trade" which was here the object of restraint was *Group Health's business of providing medical care and hospitalization in return for the payment of money as dues.* The issue on this branch of the case, therefore, is whether the restraint of that business of Group Health was a restraint of *trade*.

That this is the issue appears plainly from the indictment and the district court's view of the case. The indictment charged a conspiracy to prevent Group Health from providing medical care by means of group practice on a risk-sharing prepayment basis. It alleged that AMA had been long opposed to practice on this basis (R. 7); that it had used its Journal to express publicly such opposi-

tion (R. 9); that it had used its Principles of Medical Ethics to condemn such practice as "unethical" (R. 10); and that after Group Health had been organized to furnish medical care on the basis opposed by petitioners they conspired to restrain it from succeeding in its endeavor (R. 14–15).

The indictment also charged that, as part of the conspiracy to destroy Group Health, petitioners combined to restrain the members of Group Health, the doctors on its staff, other doctors, and the Washington hospitals (R. 14–15). Petitioners assert (Br. 32) that the district court instructed the jury that restraint on the trade of any one of these five "classes" was sufficient to convict. On the basis of this interpretation of the instructions, they urge that if restraint on the activities of any one of the five is not a restraint of trade prohibited by Section 3, the judgments of conviction should be reversed,[42] and that, therefore, it is necessary to determine whether Section 3 applies to restraints

[42] Petitioners also contend (Br. 32) that their motions for judgment n. o. v., for a new trial, and in arrest of judgment, present the same issue, namely, whether the convictions can stand if restraint on any one of the five activities in question is not forbidden by Section 3. But these motions raised no such issue. They challenged convictions upon grounds not now material and upon the ground (1) that the entire evidence was insufficient to sustain conviction and (2) that the indictment failed to charge any offense under Section 3 (R 1517–24).

upon "the practice of medicine and the rendering of medical services" (Br. 81).[43]

Petitioners have, however, mistaken the district court's instructions to the jury. Under these instructions the jury, before convicting, was required to find that petitioners were engaged in a conspiracy to restrain the operations and business of Group Health. The district court advised the jury that the indictment alleged that petitioners conspired to restrain Group Health, the doctors on its staff, other doctors, and the Washington hospitals (R. 1507–8). But it further advised the jury that the indictment alleged that the "plan and purpose" of the conspiracy was to "hinder and ob-

[43] More precisely, petitioners insist (Br. 29–32) that each of the following five activities must be shown to be "trade": (1) Group Health's activities; (2) the activities of Group Health's members; (3) the activities of the medical staff of Group Health; (4) the practice of medicine generally; and (5) the activities of the Washington hospitals.

The district court made no mention of the allegation that petitioners conspired to restrain the *members* of Group Health (R. 1507–8) and thus it brought to the jury's attention restraint of four types of activity, not five. While we submit that the issue involves only the first activity—of Group Health—we show at a subsequent point (pp. 61–64) that in any event restraint of an individual in the practice of medicine is a restraint of trade. Our argument on that point covers both the third and fourth activities mentioned above. That the restraint of activities of the hospitals constituted restraint of trade is shown both by our argument relating to Group Health (*infra*, pp. 57–61) and by the argument concerning the broader issue whether restraint of the practice of medicine or rendering medical services is a restraint of trade.

struct" Group Health and the doctors on its staff, in certain specified ways (R. 1508). It then instructed the jury (*ibid.*):

> To sustain that charge the Government must prove beyond a reasonable doubt that a conspiracy did in fact exist to restrain trade in the District in at least one of the several ways alleged, *and according to the particular purpose and plan set forth.* * * * [Italics added.]

Under this instruction the jury, in order to convict, was required to find not only that there was a conspiracy to restrain trade in one of the several ways mentioned by the court (*i. e.*, to restrain Group Health, its doctors, other doctors, or the hospitals) but also that the plan and purpose of the conspiracy was to obstruct and interfere with Group Health in its business of providing medical care for its members. The jury was instructed, in other words, that restraint upon the business of Group Health was an essential element of the conspiracy charged against petitioners.

That this was the effect of the district court's instructions is further shown by the portion of its charge dealing with the opposing contentions of the parties. The court charged (R. 1509):

> The Government claims that the evidence proves the medical societies were opposed to Group Health and its plan of group medical care on a fixed prepayment basis; that they feared competition by that method of prac-

tice as against the fee-for-service method of organized physicians; that to obstruct and destroy such competition the medical societies, with certain officers and members of the hospitals, conspired to prevent successful operation of Group Health's plan by imposing restraints on physicians affiliated with Group Health * * *.

* * * * *

If you believe the contention of the Government is established beyond a reasonable doubt, then the conspiracy is made out * * *.

It also charged (R. 1510):

If it be true, as defendants claim, that the District Society, acting only to protect its organization, * * * adopted reasonable rules and measures to those ends, *not calculated to restrain Group Health, there would be no guilt* * * *." [Italics added.]

"The Court charged that there would be criminal intent if the defendants' purpose was to do acts the natural and probable effect of which would be to impose "any of the restraints alleged" (R. 1510). But if there was ambiguity in this language or in that quoted from R. 1508 (*supra*, p. 55), petitioners are not entitled to reversal by reason of such ambiguity since they did not take exception thereto and did not ask the court to clarify these portions of the charge. Only in exceptional circumstances will an appellate tribunal set aside the verdict of a jury for an error not brought to the attention of the trial court, for example, if the error is "obvious" or would "seriously affect the fairness, integrity or public reputation of judicial proceedings." *United States v. Atkinson*, 297 U. S. 157, 160.

The court below adopted the Government's view as to the issue presented. It said that, "entirely apart from any direct restraint upon the practice of medicine itself," if a conspiracy was shown to restrain competition, raise prices, or otherwise control the market to the detriment of purchasers or consumers of medical or hospital services, "by destroying or injuring Group Health Association, it was sufficient to sustain conviction" (R. 1890).

In our view, therefore, the issue here is only whether restraint of the business of Group Health in supplying medical services and hospitalization is restraint of *trade*. We submit that there was such restraint.

In determining the range of activities which are protected against restraints prohibited by Sections 1 and 3 of the Sherman Act, Congress intended that the words of the Act be given a broad and liberal interpretation. *Atlantic Cleaners & Dyers, Inc.* v. *United States*, 286 U. S. 427, 434–435. The Act, as this Court noted in the *Apex* case (310 U. S. at pp. 493, 495), affords protection against restraints upon the marketing of both goods and services. The judicial history of the Sherman Act establishes the wide range of this protection, which extends to every commodity or service which is the subject of commerce, from railroad transportation (*United States* v. *Union Pacific R. R. Co.*, 226 U. S. 61) through commodities such as petroleum and its products (*Standard Oil Co.* v. *United States*, 221 U. S. 1) to the service of dyeing or cleaning clothes

(*Atlantic Cleaners & Dyers, Inc.* v. *United States, supra*).

It can hardly be assumed that Congress intended to carve from this wide field of protected goods and services so basic and vital a service as the providing of medical care. For this, as we have noted, was precisely the business of Group Health. That organization had embarked upon a large-scale enterprise involving provision of medical service and hospitalization for some 2600 members and their dependents in return for the payment by these members of monthly dues.[45] In exchange for such payments, Group Health provided certain specified service. It was therefore engaged in a continuous course of dealing involving exchange of service for money and it was engaged in "trade" under the primary and most usual meaning of that word.

Petitioners contend (Br. 29) that since Group Health is a nonprofit organization its activities could not constitute "trade." But an organization may be engaged in trade although it does not carry on its operations for the purpose of earning a profit for itself or its stockholders.[46] Such an

[45] Potentially the enterprise might embrace the 100,000-odd Government employees in the District of Columbia and their families. Petitioners' appreciation of the potential scope of Group Health's operations was, indeed, one of the primary considerations actuating them in forming the conspiracy to combat Group Health (*supra*, pp. 20, 23).

[46] See *In the Matter of the Duty on the Estate of the Incorporated Council of Law Reporting for England and Wales*, 22 Q. B. 279, 293, per Lord Coleridge:

"* * * it is not essential to the carrying on of a trade that the person engaged in it should make, or desire to make,

organization may be engaged in "commerce" within the meaning of the commerce power of Congress. *Associated Press* v. *National Labor Relations Board*, 301 U. S. 103, 128–129. There are many nonprofit consumers' cooperatives engaged in wholesaling or retailing. Plainly they are not the less engaged in trade, nor is a restraint upon their business operations the less a restraint of trade, simply because they return to their customers, in lower prices or in "patronage dividends", the equivalent of the ordinary dealer's profit. Nonprofit cooperative associations have been held to be "doing business" in a variety of situations.[*] If their nonprofit character does not exclude them from this phrase, it clearly does not exclude them from the broad phrase "restraint of trade."

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a profit by it. Though it may be true that in the great majority of cases the carrying-on of a trade does, in fact, include the idea of profit, yet the definition of the mere word 'trade' does not necessarily mean something by which a profit is made." * * *

[*] For purposes of taxation: *Md. & Va. Milk Producers Ass'n, Inc.* v. *District of Columbia*, 119 F. (2d) 787 (App. D. C.), certiorari denied 314 U. S. 646; *Hazen* v. *National Rifle Ass'n of America*, 101 F. (2d) 432, 440 (App. D. C.); *Sears, Roebuck & Co. Employees' Savings, Etc.* v. *Commissioner*, 45 F. (2d) 506, 509 (C. C. A. 7); *Memphis Chamber of Commerce* v. *Memphis*, 144 Tenn. 291, 296–297. Under a statute applicable to foreign corporations: *State* v. *Ku Klux Klan*, 117 Kans. 564, 572, 573; *Ku Klux Klan* v. *Commonwealth*, 138 Va. 500, 509; *Pacific Typesetting Co.* v. *International Typographical Union*, 125 Wash. 273, 277. Under a statute regulating corrupt political practices: *La Belle* v. *Hennepin County Bar Ass'n*, 206 Minn. 290, 294.

Petitioners also emphasize (Br. 17–20) this Court's references in the *Apex* case to the Sherman Act as prohibiting restraints of "business and commercial" transactions and restraints on "commercial" "business" competition; and they contend that restraints on competition in providing medical care and service cannot be regarded as within the Act since the competition is not "commercial" or "business." But, as we have noted, Group Health was engaged in business; the controversy between petitioners and Group Health, indeed, involved an effort by the former to destroy the business activities of the latter. Petitioners, representing one group of persons offering medical services, sought to eliminate the competition of another group with a different technique of offering such services. In any event, it is plain that this Court's use of the words "commercial" and "business" was only to underscore the distinction, there relevant, between restraints on the marketing of goods or services to purchasers or consumers and other kinds of restraints which merely impede commerce. For, as the Court observed (310 U. S. at pp. 486–487) a conspiracy to derail and rob an interstate train would not necessarily involve a violation of the Sherman Act. In such a case the essential element of "business" or "commercial" competition would probably be lacking, as it was in the *Apex* case; the Court utilized the words only in this sense, not in the sense of draw-

ing distinctions between one kind of calling and another.

Thus we submit that since Group Health's business was the object of petitioners' restraint and since that business was trade in its primary sense, there was a "restraint of trade" within the meaning of the Act. It is therefore unnecessary to determine whether the restraint of an *individual* doctor in the pursuit of his calling is as such a prohibited restraint of trade. But if we are wrong in our view of the issue we submit that restraint upon the individual doctor in the practice of his calling falls within the prohibitions of the Act [48] since restraint upon this type of activity was included in the common law doctrine of restraint of trade.

The common law concept of restraint of trade was, as we have noted (*supra*, p. 43), incorporated into the Sherman Act. See *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 498.[49] Concerning the scope

[48] Even the broader issue must, of course, be resolved with reference to the critical circumstances of the case—that the restraint upon the practice of individual doctors was entirely ancillary to, and for the purpose of, restraining the operations of an organization which, in substantial competition with petitioners' doctor members, had entered the field or market of providing medical care.

[49] In *United States* v. *Addyston Pipe & Steel Co.*, 85 Fed. 271 (C. C. A. 6) (affirmed 175 U. S. 211), which first judicially expounded the view that the Sherman Act was to be construed with reference to the common law doctrine of restraint of trade, the court said (p. 278), "it is certain that, if the contract of association which bound the defendants was void and unenforceable at the common law because in restraint of trade, it is within the inhibitions of the statute".

of the common law doctrine of restraint of trade, this Court said in *Standard Oil Co.* v. *United States*, 221 U. S. 1, 51:

> It is certain that at a very remote period the words "contract in restraint of trade" in England came to refer to some voluntary restraint put by contract by an individual on his right to carry on his *trade or calling.* * * * [Italics supplied.]

In England, from as early as 1793, a contract limiting a doctor in the pursuit of his calling has been consistently referred to as involving the doctrine of "restraint of trade."[50] Early American cases decided before the enactment of the Sherman Act recognized and followed the reasoning of the English cases.[51] In *Gilman* v. *Dwight*, 79 Mass. 356 (1849), the court, while holding that the contract limiting a doctor's practice was only in partial restraint of trade and therefore not unlawful, said (p. 359): "There is nothing in the nature of the business or profession [of a doctor], to which the contract relates, which takes it out of the ordinary rules applicable to contracts in partial restraint of trade." See also later American cases

[50] See *Davis* v. *Mason*, 5 T. R. 118 (1793); *Hayward* v. *Young*, 2 Chitty 407 (1818); *Atkyns* v. *Kinnier*, 4 Ex. 776 (1850); *Gravely* v. *Barnard*, L. R. 18 Eq. 518 (1874).

[51] See *Gilman* v. *Dwight*, 79 Mass. 356 (1859); *Dwight* v. *Hamilton*, 113 Mass. 175 (1873); *Cook* v. *Johnson*, 47 Conn. 175 (1879); *Haldeman* v. *Simonton*, 55 Iowa 144 (1880); *Manderville* v. *Harman*, 42 N. J. Eq. 185 (1886).

cited by the court below in *United States* v. *American Medical Ass'n,* 110 F. (2d) 703, 710.

The facts in *Pratt* v. *British Medical Ass'n,* [1919] 1 K. B. 244, are strikingly like those here.[52] This was a tort action to recover damages for a conspiracy to boycott the plaintiff doctors. They had joined the staff of an organization which had fallen under the ban of the defendant medical society because its members were opposed to what was called "contract practice." The plaintiffs were thereupon expelled from the society, and its members were, under the rules of the society, forbidden to consult with them. The court, in holding that the plaintiffs were entitled to recover, said (pp. 274–275):

> Upon considering the rules in question I have arrived at the conclusion that they are in restraint of trade, and are void on the ground of public policy. They gravely, and in my view unnecessarily, interfere with the freedom of medical men in the pursuit of their calling, and they are, I think, injurious to the interests of the community at large. It may well be that the opinion I have just expressed will, if upheld, destroy the cogency of the defendants' scheme of boycott; but it leaves them with the safer and more kindly weapons of legitimate persuasion and reasoned argument.

[52] The critical comments on the *Pratt* case in *Ware and De Freville, Ltd.* v. *Motor Trade Ass'n,* [1921] 3 K. B. 40, do not overrule or disapprove its basic doctrine.

In the present case the court below, in sustaining the validity of the indictment, carefully reviewed the authorities and concluded: [53]

> The indubitable effect of all of these cases, English and American, is to enlarge the common acceptation of the word "trade" when embraced in the phrase "restraint of trade" to cover all occupations in which men are engaged for a livelihood. * * *

The cases cited by petitioners (Br. 13–27) do not hold to the contrary. Most of these cases deal with the meaning of the word "trade" in a setting wholly foreign to the phrase "restraint of trade" as it is used in the Sherman Act.[54] Nor do the three cases—*Apex Hosiery Co.* v. *Leader*, 310 U. S. 469; *Atlantic Cleaners & Dyers, Inc.* v. *United States*, 286 U. S. 427; and *Federal Baseball Club* v. *National League*, 259 U. S. 200—which arise under the Sherman Act reach the issue here. The *Apex* case, as we have noted (*supra*, p. 60) referred to "business" or "commercial" competition or

[53] *United States* v. *American Medical Ass'n*, 110 F. (2d) 703, 710.

[54] In *Federal Trade Commission* v. *Raladam Co.*, 283 U. S. 643, this Court was concerned with the question whether any competitor was shown to have been injured by the unfair trade practices of respondent, who sold an obesity remedy. Insofar as the Court referred to doctors at all, it held only that medical practitioners were not in competition with respondent; that they followed a "profession and not a trade, and are not engaged in the business of making or vending remedies but in prescribing them" (p. 653). Thus while the Court held doctors not to be *competing* with respondent, it stated that they were engaged in a *business*.

transactions in a context wholly unrelated to the question now presented. The *Atlantic Cleaners* case included (p. 436), in the course of its holding that restraint upon the service of cleaning and dyeing clothes was a restraint of trade forbidden by Section 3 of the Act, a quotation from *The Schooner Nymph*, 1 Summ. 516, 517–518, which stated that "Wherever any occupation, employment, or business is carried on for the purpose of profit, or gain, or a livelihood, not in the liberal arts or in the learned professions, it is constantly called a *trade*." That portion of this sentence upon which petitioners rely was plainly not pertinent to the question before the Court in the *Atlantic Cleaners* case, or before the court in *The Schooner Nymph* case. Similarly, the *Baseball Club* case is not decisive. It turned on the meaning of the word "commerce" as used in Sections 1 and 2 of the Act, and its holding that the restraint of baseball leagues was not a restraint of "trade or commerce" rested largely on the ground that there was no restraint of *interstate* commerce (pp. 208–209). That question, of course, is not present here.

II

PETITIONERS ARE NOT WITHIN ANY IMMUNITY CONFERRED BY SECTION 20 OF THE CLAYTON ACT

Section 20 of the Clayton Act provides that in any case "between an employer and employees" growing out of a dispute "concerning terms or con-

ditions of employment" certain specified conduct—strikes, peaceful picketing, peaceable assembly, ceasing to patronize—shall not "be considered or held to be violations of any law of the United States." The section is not limited to disputes between an employer and his immediate employees; it extends its protection to disputes (otherwise within the scope of the section) where the parties to the controversy do not stand in the proximate relation of employer and employee. *United States* v. *Hutcheson*, 312 U. S. 219.

Petitioners contend that Group Health engaged the services of doctors on a full-time, salaried basis; that it engaged the services of doctors who held membership in petitioners' organizations; that petitioners objected to these features of Group Health's plan of providing medical care; that the present case therefore grew out of a dispute concerning terms or conditions of employment; that this dispute was between an employer (Group Health) and employees (petitioners);[55] and that, accordingly, petitioners' conduct is rendered immune from prosecution by Section 20 of the Clayton Act.

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[55] Although petitioners were engaged in boycotting the doctors on Group Health's staff and were endeavoring to bring them into disrepute with their fellow doctors, under the contention now being considered petitioners cast themselves, as the court below said (R. 1894), "in the role of" organizations representing the interests of these boycotted doctors.

We submit that petitioners are clearly not within any immunity conferred by Section 20. It grants immunity only when there is a dispute concerning some question of employment involving the employer-employee relationship. Here there was no such dispute.

Three essential and related factors present here sharply distinguish the controversy between petitioners and Group Health from the kind of controversy which is immunized by the Clayton Act: first, the nature of petitioners and their members; second the nature of the controversy itself; and third, the nature of relationship of the doctors on the Group Health staff to Group Health. Any one of these elements precludes subsuming the instant situation under the class of labor disputes contemplated by the Act.

One element normally essential to a dispute protected by the Clayton Act is the presence on one side—the side the activities of which are immunized from prosecution—of employees, or their representatives, or both. This element is entirely lacking here. There were no employees, potential or otherwise, connected with petitioners. The doctor-members (other than the doctors serving Group Health, whose status is discussed below) whom petitioners represented were not employees of any employer; rather they were independent entrepreneurs who sell their services on a case-to-case basis. The doctor-members' income was received

from patients, and it can hardly be contended that an employer-employee relationship exists between the doctor-members and their patients. Each doctor member is, therefore, actually in business for himself, and each comprises an independent selling unit analogous to any other individual enterprise. Plainly, if all individual independent business men operating in a given field combined, their combination would be not a labor union, since they are not employees and do not wish to be employees, but rather a trade association. Just as an organization representing its members who catch and sell fish is not protected by the Clayton Act,[56] so petitioners, since not representing employees, are not protected here.

For similar reasons, the instant controversy was not a labor dispute within the meaning of the Clayton Act. Here petitioners sought to obstruct and defeat the operations of Group Health. The indictment charged and the evidence showed that the reason for forming this conspiracy was petitioners' fear of the competition of that organization and of the plan under which it offered medical service to members of the public. As the court below said, "The fact of commercial and business competition is the predominant note in the controversy which preceded the initiation of criminal prosecutions in this case" (R. 1890). The

[56] *Columbia River Packers Ass'n, Inc.* v. *Hinton*, 315 U. S. 143.

controversy out of which the present case arose was between petitioners, representing the body of organized doctors practicing on a fee-for-service basis, who desired to retain their existing monopoly of the business of furnishing medical care, and Group Health, an organization which challenged this monopoly by offering to provide medical care by means of group practice on a risk-sharing, prepayment basis. The situation is analogous to that which would exist if concerns engaged in marketing some commodity should combine to prevent a new competitor from intruding into their field of trade and should profess that the purpose of their combination was to protect the public against purchase of inferior goods.

The relationship between petitioners and Group Health was thus that of competitors, not that of employer and employee. Petitioners were not engaged in promoting, nor did they have any desire to promote, the interests of the employees of Group Health (assuming *arguendo* that the doctors on its staff are properly designated as employees). They were not seeking to procure for these doctors higher pay or more favorable working conditions. They were not seeking recognition as the collective-bargaining representative of Group Health doctors. They were not seeking jobs on Group Health's staff for their own members. On the contrary, as in *Columbia River Packers Ass'n, Inc.* v. *Hinton*, 315

U. S. 143, petitioners did not seek "employment" with Group Health and it was petitioners' desire that its members and other doctors "continue to operate as independent businessmen, free from such controls as an employer might exercise" (p. 147). Indeed, it was the very essence of petitioners' objective to destroy Group Health altogether so that it could not utilize the services of any doctors at all."[57]

We submit that the *Columbia River* case is decisive on this aspect of the case. The plaintiff there operated a fish cannery. The defendants were a union affiliated with the CIO, its members, and officers. The union acted as sales agent for its members in selling the fish caught by the members; in its sales contracts the union required the buyer to agree to purchase fish exclusively from union members. When the plaintiff cannery declined to make such an agreement, the union members refused to sell to it and it sought an injunction,

[57] It is in this respect, among others, that *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U. S. 552, relied upon by petitioners (Br. 54–55) is inapposite. In that case, the objective of New Negro Alliance was the seeking of employment for those whom it represented. The groups which New Negro Alliance picketed and boycotted were, directly or indirectly, potential employers and the persons whose cause the Alliance espoused were their potential employees. In the instant case, the situation is exactly the contrary, for petitioners did not in any way seek "employment" for its members, but wished to end any possibility of such "employment."

charging a violation of the Sherman Act. This Court held that the jurisdictional limitations imposed by the Norris-LaGuardia Act were inapplicable because the case did not involve a labor dispute within the meaning of that act.[58] The Court said (pp. 145–147):

> That a dispute among businessmen over the terms of a contract for the sale of fish is something different from a "controversy concerning terms or conditions of employment, or concerning the association * * * of persons * * * seeking to arrange terms or conditions of employment" calls for no extended discussion. This definition and the stated public policy of the Act—aid to "the individual unorganized worker * * * commonly helpless * * * to obtain acceptable terms and conditions of employment" and protection of the worker "from the interference, restraint, or coercion of employers of labor"—make it clear that the attention of Congress was focussed upon disputes affecting the employer-employee relationship, and that the Act was not intended to have application to disputes over the sale of commodities.

[58] The holding and the reasoning of the Court obviously apply with even greater force to the narrower language used in Section 20 of the Clayton Act, namely, disputes "between an employer and employees * * * concerning terms or conditions of employment." Cf. *United States* v. *Hutcheson*, 312 U. S. 219.

> * * * the statutory classification, however broad, of parties and circumstances to which a "labor dispute" may relate does not expand the application of the Act to include controversies upon which the employer-employee relationship has no bearing. Our decisions in *New Negro Alliance* v. *Grocery Co.*, 303 U. S. 552, and *Milk Wagon Drivers' Union* v. *Lake Valley Co.*, 311 U. S. 91, give no support to the respondents' contrary contention, for in both cases the employer-employee relationship was the matrix of the controversy.

In addition, even assuming that petitioners and their members can be subsumed under the class of employee representatives and employees contemplated by the Clayton Act, the latter's protection is still inapplicable because of the relationship of Group Health to the doctors which comprise its staff. Here we assume, contrary to the actual situation, that petitioners can be regarded as trade unions representing their doctor members with reference to employment, and that petitioners also sought to "represent" the Group Health doctors. Nevertheless the relationship between Group Health and the doctors on its staff lacked the essential element of the kind of employer-employee relationship contemplated by the Clayton Act.

The Group Health doctors were not employees. As the court below observed (R. 1895)

"For a fixed sum they assumed to render services when needed. In the rendering of those services, when needed, they are not subject to supervision by the Association [Group Health]. Originally independent contractors, they do not lose that status by contracting to perform unsupervised services." It is unnecessary for this Court to decide whether doctors can ever be in such a position as to create an employee-employer relationship in respect of their medical services. Indeed, it may be that if doctors engaged on a contract basis in industrial medicine, or internes of a hospital working on a salary basis, formed a union for collective bargaining purposes, they would be protected by the Clayton Act. No such issue was presented here, however, since whatever characteristics of an employer-employee relationship may exist in other situations involving doctors, that relationship was absent in the instant case in respect of Group Health and the doctors who were on its staff.

We submit that on the basis of any one of these three factors—the nature of petitioners and their members, of the controversy here involved, and of the relationship between Group Health and its medical staff, the Clayton Act is inapplicable. It follows that these three elements combined patently remove the instant case from the operation of that Act.

CONCLUSION

It is respectfully submitted that the judgments of the court below should be affirmed.

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DECEMBER 1942.

U. S. GOVERNMENT PRINTING OFFICE: 1942

SUPREME COURT OF THE UNITED STATES.

Nos. 201-202.—October Term, 1942.

American Medical Association, a corporation, Petitioner,
201 *vs.*
The United States of America.

The Medical Society of the District of Columbia, a corporation, Petitioner,
202 *vs.*
The United States of America.

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia.

[January 18, 1943.]

Mr. Justice Roberts delivered the opinion of the Court.

Petitioners have been indicted and convicted of conspiring to violate § 3 of the Sherman Act,[1] by restraining trade or commerce in the District of Columbia. They are respectively corporations of Illinois and of the District of Columbia. Joined with them as defendants were two unincorporated associations and twenty-one individuals, some of whom are officers or employes of one or other of the petitioners, the remainder being physicians practicing in the District of Columbia and members of the petitioners serving, as to some of them, on various committees of the petitioners having to do with professional ethics and with the practice of medicine by petitioners' members.

For the moment it is enough to say that the indictment charged a conspiracy to hinder and obstruct the operations of Group Health Association, Inc., a nonprofit corporation organized by Government employes to provide medical care and hospitalization on a risk-sharing prepayment basis. Group Health employed physicians on a full time salary basis and sought hospital facilities for the treatment of members and their families. This plan was contrary to the code of ethics of the petitioners. The indictment charges that, to prevent Group Health from carrying out its objects, the defendants conspired to coerce practicing physicians, members of the

[1] Act of July 2, 1890, § 3, c. 647, 26 Stat. 209, 15 U. S. C. § 3.

petitioners, from accepting employment under Group Health, to restrain practicing physicians, members of the petitioners, from consulting with Group Health's doctors who might desire to consult with them, and to restrain hospitals in and about the City of Washington from affording facilities for the care of patients of Group Health's physicians.

The District Court sustained a demurrer to the indictment on the grounds, amongst others, that neither the practice of medicine nor the business of Group Health is trade as the term is used in the Sherman Act.[2] On appeal the Court of Appeals reversed, holding that the restraint of trade prohibited by the statute may extend both to medical practice and to the operations of Group Health.[3]

The case then went to trial in the District Court. Certain defendants were acquitted by direction of the judge. As to the others, the case was submitted to the jury which found the petitioners guilty, and all the other defendants not guilty. From judgments of conviction the petitioners appealed to the Court of Appeals, which reiterated its ruling as to the applicability of § 3 of the Sherman Act, considered alleged trial errors, and affirmed the judgments.[4]

We granted certiorari limited to three questions which we thought important: 1. Whether the practice of medicine and the rendering of medical services as described in the indictment are "trade" under § 3 of the Sherman Act. 2. Whether the indictment charged or the evidence proved "restraints of trade" under § 3 of the Sherman Act. 3. Whether a dispute concerning terms and conditions of employment under the Clayton and Norris-LaGuardia Acts was involved, and, if so, whether petitioners were interested therein, and therefore immune from prosecution under the Sherman Act.

First. Much argument has been addressed to the question whether a physician's practice of his profession constitutes trade under § 3 of the Sherman Act. In the light of what we shall say with respect to the charge laid in the indictment, we need not consider or decide this question.

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[2] United States v. American Medical Association, 28 F. Supp. 752.

[3] United States v. American Medical Association, 72 App. D. C. 12, 110 F. 2d 703, 710, 711.

[4] American Medical Association v. United States, — App. D. C. —, 130 F. 2d 233.

Group Health is a membership corporation engaged in business or trade. Its corporate activity is the consummation of the cooperative effort of its members to obtain for themselves and their families medical service and hospitalization on a risk-sharing prepayment basis. The corporation collects its funds from members. With these funds physicians are employed and hospitalization procured on behalf of members and their dependents. The fact that it is cooperative, and procures service and facilities on behalf of its members only, does not remove its activities from the sphere of business.[5]

If, as we hold, the indictment charges a single conspiracy to restrain and obstruct this business it charges a conspiracy in restraint of trade or commerce within the statute. As the Court of Appeals properly remarked, the calling or occupation of the individual physicians charged as defendants is immaterial if the purpose and effect of their conspiracy was such obstruction and restraint of the business of Group Health. The court said:[6] "And, of course, the fact that defendants are physicians and medical organizations is of no significance, for Sec. 3 prohibits 'any person' from imposing the proscribed restraints . . ." It is urged that this was said before this court decided *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469. But nothing in that decision contradicts the proposition stated. Whether the conspiracy was aimed at restraining or destroying competition, or had as its purpose a restraint of the free availability of medical or hospital services in the market, the *Apex* case places it within the scope of the statute.[7]

Second. This brings us to consider whether the indictment charged, or the evidence proved, such a conspiracy in restraint of trade. The allegations of the indictment are lengthy and detailed. After naming and describing the defendants and the Washington hospitals, it devotes many paragraphs to a recital of the plan adopted by Group Health and alleges that, principally for economic reasons, and because of fear of business competition, the defendants have opposed such projects.

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[5] Compare, Associated Press v. National Labor Relations Board, 301 U. S. 103, 128-9; In re Duty on Estate of Incorporated Council, 22 Q. B. 279, 293; Maryland and Virginia Milk Producers' Ass'n v. District of Columbia, 119 F. 2d 787, 790; La Belle v. Hennepin County Bar Ass'n, 206 Minn. 290, 294, 288 N. W. 711.

[6] 119 F. 2d 711.

[7] Compare Fashion Originator's Guild v. Federal Trade Commission, 312 U. S. 457, 465, 466, 467.

The indictment then recites the size and importance of the petitioners, enumerates means by which they can prevent their members from serving Group Health plans, or consulting with physicians who work for Group Health, and can prevent hospitals from affording facilities to Group Health's doctors.

In charging the conspiracy, the indictment describes the organization and operation of Group Health and states that, from January 1937 to the date of the indictment, the defendants, the Washington hospitals, and others cognizant of the premised facts, "have combined and conspired together for the purpose of restraining trade in the District of Columbia, . . ." In five paragraphs the pleading states the purposes of the conspiracy. The first is the purpose of restraining Group Health from doing business; the second, that of restraining members of Group Health from obtaining adequate medical care according to Group Health's plan; the third, that of restraining doctors serving Group Health in the pursuit of their calling; the fourth, that of restraining doctors not on Group Health's staff from practicing in the District of Columbia in pursuance of their calling; and the fifth, that of restraining the Washington hospitals in the business of operating their hospitals.

After reciting certain of the proceedings and plans adopted to forward the conspiracy, the indictment alleges that the conspiracy, and the intended restraints which have resulted from it, have been effectuated "in the following manner and by the following means"; and alleges that the defendants have combined and conspired "with the plan and purpose to hinder and obstruct Group Health Association, Inc. in procuring and retaining on its medical staff qualified doctors and to hinder and obstruct the doctors serving on that staff from obtaining consultations with other doctors and specialists practicing in the District of Columbia." It states that, pursuant to this plan and purpose, the defendants have resorted to certain means to accomplish the end, and recounts them.

In another paragraph, the defendants are charged to have conspired with "the plan and purpose to hinder and obstruct Group Health Association, Inc. in obtaining access to hospital facilities for its members and to hinder and obstruct the doctors on the medical staff of Group Health from treating and operating on their patients in Washington hospitals." It is alleged that, pursuant to this plan and purpose, defendants have done certain acts to deter hos-

pitals with which they were connected and over which they exercised influence, from affording hospital facilities to Group Health's doctors.

The petitioners' contention is, in effect, that the indictment charges five separate conspiracies defined by their separate and recited purposes, namely, conspiracy to obstruct the business of Group Health, to obstruct its members from obtaining the benefit of its activities, to obstruct its doctors from serving it, to obstruct other doctors in the practice of their calling, and to restrain the business of Washington hospitals. The petitioners say that they were entitled to have the trial court rule upon the sufficiency in law of each of these charges and, as this was not done, the general verdict of guilty cannot stand. They urge that even though some of the named purposes relate to the business of Group Health, and that business be held trade within the meaning of the statute, yet, as the practice of medicine by doctors not employed by Group Health is not trade, and the operations of Washington hospitals are not trade, the last two purposes specified cannot constitute violations of § 3 and the jury should have been so instructed. In this view they insist that the jury may have convicted them of restraining physicians unconnected with Group Health, or of restraining hospitals, and, if so, the verdict and judgment cannot stand.

If in fact the indictment charges a single conspiracy to obstruct and restrain the business of Group Health, and if the recited purposes are really only subsidiary to that main purpose or aim, or merely different steps toward the accomplishment of that single end, and if the cause was submitted to the jury on this theory, these contentions fail.

When the case first went to the Court of Appeals that tribunal construed the indictment as charging but a single conspiracy. It said:[8] "The charge, stated in condensed form, is that the medical societies combined and conspired to prevent the successful operation of Group Health's plan, and the steps by which this was to be effectuated were as follows: (1) to impose restraints on physicians affiliated with Group Health by threat of expulsion or actual expulsion from the societies; (2) to deny them the essential professional contacts with other physicians; and (3) to use the coercive power of the societies to deprive them of hospital facilities for their patients."

[8] 110 F. 2d 711.

In the trial, the District Court conformed its rulings to this decision and submitted the case to the jury on the theory that the indictment charged but one conspiracy.

We think the courts below correctly construed the indictment. It is true that, in describing the conspiracy, five purposes are stated which the conspiracy was intended to further, but, in a later paragraph, still in the charging part of the instrument, it is alleged that the purpose was to hinder and obstruct Group Health in various ways and by various coercive measures, which are identical with the "purposes" before stated. The trial judge, after calling the jury's attention to the juxtaposition of these two formulations of the charge, added:

"These purposes, it is alleged, were to be attained by certain coercive measures against the hospitals and doctors designed to interfere with employment of doctors by Group Health and use of the hospitals by members of its medical staff and their patients. . . ."

In immediate context the judge added:

"To sustain that charge the Government must prove beyond a reasonable doubt that a conspiracy did in fact exist to restrain trade in the District in at least one of the several ways alleged, and according to the particular purpose and plan set forth."

At another point the trial judge summarized the Government's claim that the evidence in the case showed opposition by the petitioners to Group Health and its plan; that they feared competition between the plan and the organized physicians and that, to obstruct and destroy such competition, the petitioners conspired with certain officers and members and hospitals to prevent successful operation of Group Health's plan by imposing restraints upon physicians affiliated with Group Health, by denying such physicians professional contact and consultation with other physicians, and by coercing the hospitals to deny facilities for the treatment of their patients. Again the judge charged: "Was there a conspiracy to restrain trade in one or more of the ways alleged?" And again: "If it be true . . . that the District Society, acting only to protect its organization, regulate fair dealing among its members, and maintain and advance the standards of medical practice, adopted reasonable rules and measures to those ends, not calculated to restrain Group Health, there would be no guilt, though the indirect effect may have been to cause some restraint against Group Health."

We need add but a word as to the sufficiency of the proof to sustain the charge. The petitioners in effect challenge the sufficiency, in law, of the indictment. They hardly suggest that if the pleading charges an offense there was no substantial evidence of the commission of the offense. But, however the argument is viewed, we agree with the courts below that the case was one for submission to a jury. No purpose would be served by detailed discussion of the proofs.

Third. We hold that the dispute between petitioners and their members, and Group Health and its members, was not one concerning terms and conditions of employment within the Clayton[9] and the Norris-LaGuardia[10] acts.

Section 20 of the Clayton Act, as expanded by § 13 of the Norris-LaGuardia Act, is the only legislation which can have any bearing on the case. Section 20 applies to cases between "an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment . . ."; and provides that none of the acts specified in the section shall "be considered or held to be violations of any law of the United States."

Section 13 of the Norris-LaGuardia Act defines a labor dispute as including "any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee." It also provides that "A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or

[9] 38 Stat. 730, §§ 6 and 20, 15 U. S. C. 17, 29 U. S. C. 52.

[10] 47 Stat. 70, §§ 4, 5, 6, 8 and 13, 29 U. S. C. §§ 104, 105, 106, 108 and 113.

associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as defined in this section) of 'persons participating or interested' therein (as defined in this section)."

Citing these provisions the petitioners insist that their dispute with Group Health was as to terms and conditions of employment of the doctors employed by Group Health since the District Medical Society objected to its members, or other doctors, taking employment under Group Health on the terms offered by that corporation. They assert that § 20 of the Clayton Act, as expanded by § 13 of the Norris-LaGuardia Act, includes all persons and associations involved in a dispute over terms and conditions of employment who are engaged in the same industry, trade, craft, or occupation, or have direct or indirect interests therein. And they rely upon our decisions in *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U. S. 552, and *Drivers Union* v. *Lake Valley Co.*, 311 U. S. 91, as bringing within the coverage of the acts a third party, even though that party be a corporation not in trade, and employers and employers' associations even though they be only indirectly interested in the controversy. They insist that as the petitioners and Group Health, its members and doctors, other doctors and the hospitals, were either directly or indirectly interested in a controversy which concerned the terms of employment of doctors by Group Health, the case falls within the exemption of the statutes and they cannot be held criminally liable for a violation of the Sherman Act.

It seems plain enough that the Clayton and Norris-LaGuardia Acts were not intended to immunize such a dispute as is presented in this case. Nevertheless, it is not our province to define the purpose of Congress apart from what it has said in its enactments, and, if the petitioners' activities fall within the classes defined by the acts, we are bound to accord petitioners, especially in a criminal case, the benefit of the legislative provisions.

We think, however, that, upon analysis, it appears that petitioners' activities are not within the exemptions granted by the statutes. Although the Government asserts the contrary, we shall assume that the doctors having contracts with Group Health were employes of that corporation. The petitioners did not represent present or prospective employes. Their purpose was to prevent

anyone from taking employment under Group Health. They were interested in the terms and conditions of the employment only in the sense that they desired wholly to prevent Group Health from functioning by having any employes. Their objection was to its method of doing business. Obviously there was no dispute between Group Health and the doctors it employed or might employ in which petitioners were either directly or indirectly interested.

In truth, the petitioners represented physicians who desired that they and all others should practice independently on a fee for service basis where whatever arrangement for payment each had was a matter that lay between him and his patient in each individual case of service or treatment. The petitioners were not an association of employes in any proper sense of the term. They were an association of individual practitioners each exercising his calling as an independent unit. These independent physicians, and the two petitioning associations which represent them, were interested solely in preventing the operation of a business conducted in corporate form by Group Health. In this aspect the case is very like *Columbia River Packers Association, Inc.*, v. *Hinton*, 315 U. S. 143. What was there decided requires a holding that the petitioners' activities were not exempted by the Clayton and the Norris-LaGuardia Acts from the operation of the Sherman Act.

The judgments are affirmed.

Mr. Justice MURPHY and Mr. Justice JACKSON took no part in the consideration or the decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.